IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

PAUL R. PHILBROOK, *etc.*,

Appellant,

v.

JEAN GLODGETT, *et al.*,

Appellees.

No. 74-132

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Appellant,

v.

JEAN GLODGETT, *et al.*

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

CONSOLIDATED BRIEF OF PLAINTIFF–APPELLEES

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QUESTIONS PRESENTED

1. Did the District Court have jurisdiction over the claims against the State of Vermont under 28 U.S.C. §§1343(3) and (4)?

2. Is it necessary for resolution of the issues presented by this case that jurisdiction be established over the U. S. Department of Health, Education and Welfare?

3. Does the Court have jurisdiction over the claims against the U. S. Department of Health, Education and Welfare under the Doctrine of pendent jurisdiction, 28 U.S.C. 1331, 28 U.S.C. 1361 or Section 10 of the Administrative Procedure Act?

4. Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(c)(ii) excludes families from Aid to Needy Families with Children benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of higher ANFC-UF benefits?

5. Should the Court reach the issue of whether 42 U.S.C. §607(b)(2)(c)(ii) violates the Due Process clause of the Fifth Amendment when the issue was briefed and argued in the District Court but the lower court found it unnecessary to decide the issue?

6. Does 42 U.S.C. §607(b)(2)(c)(ii) violate the Due Process Clause of the Fifth Amendment insofar as it establishes two groups of equally needy and dependent children, and deprives one group of higher ANFC benefits solely due to the father's eligibility to receive state unemployment compensation, no matter how small the amount?

STATEMENT OF THE CASE

Subchapter IV (A) of the Social Security Act of 1935, 42 U.S.C. §§601-643, provides for grants to states for Aid and Services to Needy Families with Children. Section 601 of Title 42 authorizes an appropriation for the purpose of enabling the states to furnish financial assistance to needy dependent children and their parents or relatives with whom they are living "to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence *consistent with* the maintenance of continuing parental care and protection, . . .".

Until 1961, benefits under the AFDC program were limited to needy children who had been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, . . .". 42 U.S.C. §606. In recognition of the fact that the limitation on eligibility for AFDC meant that "unemployed fathers are forced to desert their families in order that their families may receive aid" and that "there is no reason why a hungry child of an unemployed father should not be fed, as well as a child in other unfortunate circumstances,[1] the federal administration proposed in 1961 that AFDC eligibility be extended to children in intact families who

[1]Statement and Testimony of Abraham Ribicoff, Secretary of the U.S. Department of Health, Education and Welfare Hearings on H.R. 3864 and H.R. 3865 before the House Committee on Ways and Means, 87th Cong. 1st Sess. at 95 (1961).

were disadvantaged due to the unemployment of a parent. With some modifications, the Administration proposal became Section 407 of the Social Security Act, 42 U.S.C. §607. That provision gave the states the option of expanding the definition of "dependent child" to include a needy child who has been deprived of parental support or care by reason of the unemployment (as defined by the state) of a parent. Act of May 8, 1961, Pub. L. 87-31, 75 Stat. 75.

Originally enacted for a one year period, Section 407 was extended for five years by the 1962 amendments to the Social Security Act; extended again until June 30, 1968, and finally amended in its entirety and made permanent in 1968.

In the course of amending Section 407 in 1968,[2] Congress inserted a provision that had the effect of denying federal funds to reimburse states for payments made to families where the unemployed father was also receiving unemployment compensation.[3] Section 407(b)(2)(c)(ii) presently provides:

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[2]Congress' primary concern in amending Section 407 was to correct the disparity in eligibility requirements that had resulted from the provision in Section 407 that "unemployment" be defined by the states. Section 407, as amended, empowers the Secretary of Health, Education and Welfare to define "unemployed." See H.R. Report No. 544, 90th Cong. 1st Sess. 108 (1967); S. Report No. 744, 90th Cong. 1st Sess. 160 (1967). See Levy, Lewis and Martin, Social Welfare and the Individual, 430-32, Foundation Press (1971). *Macias v. Finch*, 324 F.Supp. 1252, 1256-1257 (N.D. Cal. 1970), *Aff'd sub. nom. Macias v. Richardson*, 400 U.S. 913 (1970).

[3]As originally enacted, Section 407(b)(2)(C)(ii) provided for the denial of AFDC to any child "if, and for as long as, such child's father–

"(b) The provisions of subsection (a) (the expanded definition of 'dependent child') shall be applicable to a State if the State's plan approved under Section 602 of this title–

* * *

(2) provides–

* * *

(c) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section–

* * *

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States."

The State of Vermont has implemented the disqualification provision by Welfare Regulation 2331.31 and interprets it to mean that if a father is merely eligible for unemployment compensation, no matter how small the benefit, the family is automatically and totally disqualified from ANFC-UF regardless of need.

This action was initiated by several Vermont families to challenge the constitutionality of the disqualification provision or, in the alternative, to construe it to apply only to the actual receipt of unemployment compensation. In each case, the amount of unemployment compensation available to the family was less than its

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."(i) is not currently registered with the public employment offices in the state, or

(ii) receives unemployment compensation under an unemployment compensation law of a State or of the United States."

Act of Jan. 2, 1968, Pub. L. 90-248, Title II, Sec. 203(a), 81 Stat. 882.

entitlement under the ANFC-UF program.[4] The suit sought declaratory and injunctive relief against the Secretary of the U. S. Department of Health, Education and Welfare and the Commissioner of the Vermont Department of Social Welfare. Since it sought to enjoin the enforcement of a federal statute and a welfare regulation of statewide application, a three judge court was convened.

The Court sustained plaintiffs' claim that 42 U.S.C. §607(b)(2)(C)(ii) affords the family an option of rejecting unemployment compensation in favor of the higher ANFC-UF benefits, without reaching the claims based on the Fifth and Fourteenth Amendments. The court enjoined the state to advise AFDC applicants of their option to refuse unemployment benefits and directed the Secretary of Health, Education and Welfare to approve Vermont's AFDC program in accordance with the judicial construction of Section 607(b)(2)(C)

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[4]The differential in monthly benefits for each family is shown by a chart prepared by HEW for its brief and reproduced here:

	AFDC	UNEMPLOYMENT COMPENSATION
Glodgett	$239	$60
Derosia	394	56
Percy	410	172

Plaintiffs submitted a Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance in the District Court utilizing statistics based on fiscal year 1972. This study showed that the average AFDC-UF payments were greater than average UI payments in 16 of the 25 states participating in the UF program and that 81% of families receiving AFDC-UF lived in those 16 states. These statistics have been revised and appear in this brief as Appendix B.

(ii). In a supplemental Opinion and Order dated December 28, 1973, the Court held that the judgment would operate prospectively for the benefit of all others similarly situated.

On March 1, 1974, acting on a motion filed by the Department of Social Welfare, the court granted a conditional stay of its judgment with respect to similarly situated families. Under the terms of the stay, persons receiving unemployment compensation are permitted to apply for and receive supplemental financial assistance from the Department of Social Welfare so that the total amount of benefits equals the amount they would otherwise receive under ANFC-UF.

SUMMARY OF ARGUMENT

I.

The Department of Health, Education and Welfare takes the position that the merits of the dispute are properly before the court on Vermont's appeal making it unnecessary to resolve the question of pendent party jurisdiction left open in *Moor v. County of Alameda*, 411 U.S. 693. We concur that the complaint states a substantial federal question thus vesting the court with jurisdiction under 28 U.S.C. §1343(3). This gave the court pendent jurisdiction over the argument that the Vermont disqualification regulation conflicts with 42 U.S.C. §607(b)(2)(C)(ii). Plaintiffs argue in the alternative that should the Court find that the constitutional claim was not substantial in light of this Court's summary affirmance of *Burr v. Smith*, 322 F.Supp. 980

(W.D. Wash. 1971), then 28 U.S.C. §1343(3) and (4) provide an independent basis of jurisdiction to allege a violation of the Supremacy Clause.

In the event that the decision of the district court is reversed on the merits, plaintiffs urge the Court to reach the merits of the constitutional argument or at least resolve the jurisdictional issue prior to a remand. Plaintiffs disagree with the Secretary that the jurisdictional issue can be obviated by intervention under 28 U.S.C. §2403, and argue instead that subject matter jurisdiction is conferred by the doctrine of pendent jurisdiction, 28 U.S.C. §1331, 28 U.S.C. §1361 and Section 10 of the Administrative Procedure Act.

II

Plaintiffs urge the Court to apply the rule that a statute should be applied and not interpreted where its language is clear and unambiguous. *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85, 89 (1935). The unvarnished language makes clear that Congress intended to prohibit concurrent receipt of both unemployment insurance and ANFC-UF and to permit the father of a family the option of rejecting unemployment compensation in order to secure higher welfare benefits for his children. This gains support from the fact that in Section 607(b)(2)(C)(i), Congress made express reference to persons "qualified to receive" unemployment compensation, demonstrating its awareness of the distinction.

Contrary to the assertions of the defendants, this construction does not produce "extraordinary results"

or results "plainly at variance with the purposes of the Social Security Act." Because the ANFC-UF program is based on need and unemployment compensation on concepts of insurance, there is no inconsistency in providing the father an option between the programs.

Moreover, even if the legislative history is consulted instead of clarifying the statutory language, it creates ambiguity where none existed before. Legislative history that obfuscates clear statutory language will not be given consideration. *Ex parte Collett*, 337 U.S. 55, 61 (1949).

III

Assuming the Court holds that Section 607(b)(2)(C)(ii) does not afford the family an option between the two programs, then the statute creates two classes of children, equally needy and dependent, one of which is denied the state-determined level of sustenance simply because their fathers are eligible for a certain type of income. This classification lacks rational relation to, and frustrates attainment of, the paramount goal of the ANFC program, namely the protection of children.

These children are, in effect, punished, not because of any conduct of their own, but solely because their fathers may receive insurance payments that bear no relation to family needs. *Levy v. Louisiana*, 391 U.S. 68, 72. Treating equally needy persons differently because of this factor is not rational, but arbitrary. *United States Department of Agriculture v. Moreno*, 93 S.Ct. 2821 (1973).

Plaintiffs also urge the Court to reach the constitutional issue even though it was not decided by the district court. The exigencies of the economic recession and the effect on children in families affected by the exclusion require that the issue be resolved as soon as possible.

ARGUMENT

I.

JURISDICTION OVER THE VERMONT DEPARTMENT OF SOCIAL WELFARE

(a) The district court had subject matter jurisdiction under *Hagans v. Lavine*, 415 U.S. 528, 94 S.Ct. 1372 (1974) over the claim that Vermont Welfare Reg. 2331.31 conflicts with 42 U.S.C. §607(b)(2)(C)(ii)

In *Hagans v. Lavine, supra*, the Court held that if a claim of constitutional deprivation is sufficiently substantial to confer jurisdiction under Section 1343(3), the federal courts have pendent jurisdiction to entertain a claim of conflict between federal and state law. 94 S.Ct. at 1378. As in *Hagans*, plaintiffs' amended complaint alleged that Section 607(b)(2)(C)(ii) and the state regulation violate the Fifth and Fourteenth amendments, respectively, or that the Vermont regulation conflicts with the federal enactment. If the primary jurisdiction conferring claim is substantial, *a fortiori*, the court is invested with power to consider the pendent statutory claim.

The standards governing application of the substantiality doctrine were reiterated in *Hagans, supra*. After observing that constitutional insubstantiality had been equated with such concepts as "essentially fictitious", "wholly insubstantial", "obviously frivolous", and "obviously without merit", the Court said:

> "The limiting words 'wholly' and 'obviously' have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. §2281. A claim is insubstantial only if 'its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.' " 94 S.Ct. at 1379.[5]

Whether the instant case presents a substantial constitutional question as judged by this standard must be assessed in light of this Court's summary affirmance of *Burr v. Smith*, 322 F.Supp. 980 (W.D. Wash. 1971) *aff'd* 404 U.S. 1027 (1972).

In *Burr*, the plaintiffs attacked the state regulation implementing the disqualification provision of Section

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[5] In *Hagans* the Court declined to re-examine the question of whether the substantiality doctrine is applicable "as a statement of jurisdictional principles affecting the power of a federal court to adjudicate constitutional claims. . .". Id. at 1379. As in *Hagans*, plaintiffs believe the equal protection claim they advances was "substantial" within the accepted definition.

607(b)(2)(C)(ii) as violating the equal protection clause of the Fourteenth amendment but made no attack on the federal statute itself. The court found a rational basis for the state regulation in the fact that, as it interpreted Section 607(b)(2)(C)(ii), the availability of federal matching funds required inclusion of the disqualification in the state plan. The court's rejection of the equal protection attack turned entirely on its belief that Section 607(b)(2)(C)(ii) required the disqualification of families in which the father received *or was eligible to receive* unemployment benefits. In this case, plaintiffs assert that if Section 607(b)(2)(C)(ii) is interpreted to exclude the latter group, it too is unconstitutional.

In *Burr*, the plaintiffs also argued that the state had an obligation to establish a wholly state funded plan to supplement benefits of unemployed fathers receiving unemployment benefits. The court rejected this equal protection argument and offered several justifications for different treatment. This court, in affirming without opinion, might have agreed that there were rational bases on which to excuse the state from creating and funding its own program. Manifestly, the instant case arises in a different context and *Burr* is not controlling. See *Bethea v. Mason*, 43 U.S.L.W. 2261 (D.Md. Nov. 12, 1974).

Moreover, it is conjectural whether an affirmance by summary action can ever be a basis for a finding of constitutional insubstantiality. *Dillenburg v. Kramer*, 469 F.2d 1222, 1225 (9th Cir. 1972). In *Edelman v. Jordan*, 94 S.Ct. 1347 (1974), Mr. Justice Rehnquist's majority opinion stated:

> "[T]hese three summary affirmances obviously are of precedental value in support of the contention that the Eleventh Amendment does not bar the relief awarded by the District Court in this case. Equally obviously they are not of the same precedental value as would be an opinion of this Court treating the question on the merits." 94 S.Ct., at 1359.

A panel of the Second Circuit has since held that this language privileges only the Supreme Court to disregard principles of *stare decisis*. *Doe v. Hodgson*, 500 F.2d 1206, 1207-8 (2d Cir. 1974). But the suggestion that a summary affirmance is not a treatment of the case on the merits[6] is a clear invitation to the lower federal courts to exercise a measure of discretion. This is underscored by the reference to Mr. Justice Brandeis' dissent in *Burnet v. Coronado Oil and Gas Co.*, 285 U.S. 393, 406-408 (1932), in which he said,

> "But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." *Edelman v. Jordan*, 94 S.Ct. at 1359-60 n.14.

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[6]One scholar has estimated that the time spent in a summary affirmance is one half hour. Hart, Forward: The Time Chart of the Justices, 73 Harv.L.Rev. 84, 95 (1959). See generally articles cited in *United States ex rel. Epton v. Nenna*, 318 F.Supp. 809, 906 n.8 (S.D.N.Y. 1970) and *Doe v. Hodgson*, 478 F.2d 537 (2n Cir. 1973), cert. denied 414 U.S. 1096 (1973).

If the lower courts are bound by *stare decisis* to dismiss cases for want of a substantial federal question where a similar case has been summarily affirmed, it is difficult to see how "better reasoning" and the "process of trial and error" will have the opportunity to be tested. The trial courts are the crucibles in which the arguments must be developed.

If, for the reasons stated above, the Court has *power* to decide the pendent claim of statutory conflict, there can be little doubt that it did not abuse its discretion in doing so. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725-26 (1966). Where the claim sought to be appended raises an issue of federal and not state law, considerations of federalism are obviously of no concern. Note, Federal Jurisdiction over Challenges to State Welfare Programs, 72 Col.L.Rev. 1404, 1414 (1972).

(b) If the equal protection claim were held to be insubstantial under *Burr v. Smith, supra*, the court had jurisdiction under 1343(3) and (4) to determine the statutory conflict issue.

Even assuming the equal protection claim could be characterized as insubstantial, the Court had jurisdiction over plaintiffs' Social Security Act claims under 1343(3) and (4).[7]

[7]This issue was exhaustively briefed by the plaintiffs in *Hagans v. Lavine, supra*. In view of the plenary treatment of the subject there, and the apparent agreement among the parties that plaintiffs' complaint raised a substantial constitutional question, this discussion is a compendium.

First, it would appear that an asserted conflict between federal and state law itself deprives the plaintiff of a right secured by the Constitution within the meaning of Section 1343(3); i.e., the right to secure the benefit of the Supremacy Clause. *Connecticut Union of Welfare Employees v. White*, 55 F.R.D. 481, 486 (D.Conn. 1972). See *Townsend v. Swank*, 404 U.S. 282, 286 (1971); *Swift & Co., Inc. v. Wickham*, 382 U.S. 111, 125 (1965). *Cf. Hagans v. Lavine*, 94 S.Ct. 1372, 1377 n.5 (1974).

In any event, Section 1983 affords a remedy, and Section 1343(3) and (4) jurisdiction, over plaintiffs' claim that the Vermont regulation is in conflict with the Social Security Act. See *Hagans v. Lavine*, 94 S.Ct. at 1377 n.5 and authorities cited.

42 U.S.C. §1983 provides for a civil action to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution and laws of the United States. The addition of the words "and laws" in 1875 evidences a clear intent to embrace statutorily-based actions. See *City of Greenwood v. Peacock*, 384 U.S. 808, 829-30 (1966); *Bomar v. Keyes*, 162 F.2d 136, 139 (2d Cir.), *cert. denied*, 332 U.S. 825 (1947). The "right" plaintiffs seek to have vindicated is the right to have their eligibility for ANFC-UF determined and administered in accordance with federal law. *Rosado v. Wyman*, 397 U.S. 397, 427 (1970) (Douglas J. concurring). Note, Federal Judicial Review of State Welfare Practices, 67 Col.L.Rev. 84, 110 (1967).

28 U.S.C. §1343(4) provides for jurisdiction over claims brought under "Any Act of Congress providing for the protection of Civil Rights." Section 1983 is an

act which provides for the protection of civil rights by affording the means by which these rights may be vindicated in federal court. *Gomez v. Florida State Employment Service*, 417 F.2d 569 (5th Cir. 1969). Among the civil rights to be protected is the right to receive property in the form of ANFC benefits without unlawful deprivation. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552. In *Moor v. County of Alameda*, 411 U.S. 693 (1973), this Court, in the course of distinguishing Section 1983 from 1988, recognized that the former provision is an act which protects civil rights within the meaning of Section 1343(4).

The major obstacle to a finding of jurisdiction under Section 1343(4) is a reference in the House Report that Section 1343(4) was a "technical amendment" to "conform to amendments made to existing law by the preceding section of the bill." Since the preceding section related to suits for injunctive relief by the Attorney General to prevent violations of 42 U.S.C. §1985, it has been suggested that Section 1343(4) was intended to be the jurisdictional counterpart of Section 1985. Herzer, Federal Jurisdiction Over Statutorily-Based Welfare Claims, 6 Harv.Civ.Rights-Civ.Lib.L.Rev. 1, 16-18 (1970).

This argument is unpersuasive. In the first place, the preceding section was not enacted. Thus, unless Congress passed 1343(4) for no reason at all, it must have a broader application. Moreover, the reference in Section 1343(4) to "*Any* Act of Congress . . ." protecting civil rights is not limited to any particular substantive provision. In this regard, the broad language of Section 1343(4) must be compared to Sections

1343(1) and (2) where Congress made specific reference to Section 1985.

Finally, in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), this Court held that Section 1343(4) provided jurisdiction for a claim brought under 42 U.S.C. section 1982. If 1343(4) was merely a "technical amendment", it is difficult to see how it could have served as a basis for jurisdiction.

28 U.S.C. Section 1343(3) providing jurisdiction where the right asserted is under any Act of Congress "providing for equal rights," is an alternative basis for jurisdiction in this case. Section 1983 is such an Act.

Originally, substantive and jurisdictional provisions were combined in Section 1 of the 1871 Civil Rights Act. District and Circuit Courts had concurrent jurisdiction over all civil rights cases. The judicial revision of 1874 divided the substantive from jurisdictional sections. The substantive provision of Section 1 became Section 1983 and jurisdiction was vested in the district court under R.S. 563(12) and in the circuit court under 629(16). The district court provision authorized jurisdiction over claims to redress deprivations of "any right secured by any law of the United States." For no apparent reason, the circuit court provision contained the "equal rights" language now found in 1343(3).

With the abolition of the circuit court jurisdiction in 1911, the "equal rights" language was used to describe the jurisdiction of the district courts. The Senate Committee noted that it had "merged" the jurisdiction of the courts without suggesting that it was contracting the district courts' power to hear civil rights cases. S.Rep.No. 388, 61st Cong. 2nd Sess. Pt.1 at 15 (1910).

There is nothing in this history to suggest that Congress intended to fashion a federal remedy which, at least in part, could not be enforced in a federal court. Yet that is the consequence unless Section 1983 itself is regarded as an "Act of Congress providing for equal rights, . . .".

The 1871 Civil Rights Act owed its provenance to an apprehension on the part of the post-bellum Congress that states were not enforcing their laws with an equal hand. *Monroe v. Pape*, 365 U.S. 167, 172-180 (1961). Section 1983 was designed to secure equal treatment of all persons before the law. It was designated "An Act to Enforce the Provisions of the Fourteenth Amendment." As part of the 1871 legislation, it was intended to reach deprivations of federal rights beyond those growing out of racial discrimination. The Court should find jurisdiction under 1343(3) to preserve the primary purpose of the Section to afford a federal forum to private citizens to seek redress for violations of federal rights under color of state law. *See Mitchum v. Foster*, 407 U.S. 225, 239 (1972); *Monroe v. Pape, supra.*

II.

SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIM THAT 42 U.S.C. SECTION 607(b)(2)(C)(ii) VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

(a) Introduction

Should the Court hold that the District Court had jurisdiction over the statutory-conflict claim and uphold

its construction of Section 607(b)(2)(C)(ii), it will not be necessary to reach plaintiffs' claim that Section 607(b)(2)(C)(ii) violates the Fifth Amendment.[8] However, an adverse decision on the merits of the statutory claim will bring the constitutional issue to the fore.

The district court, applying the "rule of necessity," *Mayor of City of Philadelphia v. Educational Equality League*, 94 S.Ct. 1323, 1340-41 (1974) (White J. dissenting), declined to reach the issue of the constitutionality of Section 607(b)(2)(C)(ii). However, it held that it had subject matter jurisdiction to consider that claim against the Secretary of Health, Education and Welfare. *Glodgett v. Betit*, 368 F.Supp. 211, 215 (D.Vt. 1973).

In Section IV(a), post, plaintiffs urge the Court that if it should reverse the judgment of the three-judge court, it should reach and decide the constitutional issue. This would naturally require a decision of the jurisdictional issue.[9] Even if the Court should determine

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[8]In his brief, the Solicitor General has assured the Court that HEW will fully comply with the Court's mandate if the judgment of the three-judge court is affirmed. The absence of the Secretary of HEW as a party has not been deemed crucial even where his interpretation of the Social Security Act has been rejected by the court. *Carver v. Hooker*, 501 F.2d 1244 (1st Cir. 1974); *Francis v. Davidson*, 340 F.Supp. 351, (D.Md.) *aff'd* 409 U.S. 904 (1972).

[9]The Solicitor General suggests that if the case should be remanded, HEW would end the jurisdictional controversy by filing a motion to intervene under Rule 24(a) and 28 U.S.C. Section 2403. But it is not clear that the jurisdictional issue is thereby mooted.

Section 2403 permits intervention in suits "in which the United States, or any agency, officer or employee thereof is not

that the issue should first be dealt with on remand, expediency militates in favor of resolving the jurisdictional question now. There would be little point to re-convening the three judge court to consider difficult constitutional questions if subject matter jurisdiction is lacking. Conservation of judicial time would be served by prompt resolution of the question.

(b) Assuming the Court finds that the claim against the Vermont Regulation implementing 607(b)(2)(C)(ii) raises a substantial constitutional question, then the District Court had pendent jurisdiction over plaintiffs' claim that 607(b)(2)(C)(ii) violates the Fifth Amendment

The doctrine of pendent jurisdiction is justified by considerations of judicial economy, convenience and fairness to litigants. As defined by the Court in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), federal courts have the *power* to hear federal and state claims

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a party." It is true that the presence of a federal officer as a party to the suit does not preclude intervention by the United States, *Katzenbach v. Morgan*, 384 U.S. 641, 646 n.4 (1966), and intervention has been allowed both to the United States and to the official charged with administering the Act whose constitutionality has been drawn in question. *O'Keefe v. New York City Board of Elections*, 246 F.Supp. 978, 981 (S.D.N.Y. 1965). This suggests that the official administering the Act and the "United States" may have different perspectives and that jurisdictional issues concerning the former are not rendered academic by the intervention of the latter. Section 2403 also makes clear that having been made a party, the Secretary himself cannot voluntarily intervene.

in one action if (1) the federal claim is sufficiently substantial to confer subject matter jurisdiction on the court, (2) the federal and state claims derive from a common nucleus of operative fact, and (3) plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding. 383 U.S. at 725. The Court also reaffirmed "that pendent jurisdiction is a doctrine of discretion, not of plaintiff's rights."

As originally conceived, the doctrine extended the Court's power to hear related claims based on state law between the same parties. But it has been clearly established that the doctrine embraces pendent federal claims as well. *Hagans v. Lavine*, 94 S.Ct., *supra*, at 1385 n.14. The question of whether the doctrine permits the addition of a party when there is no independent basis of jurisdiction over him was expressly left undecided in *Moor v. County of Alameda*, 93 S.Ct. 1785, 1797-99 (1973).

The district court held that the Secretary of Health, Education and Welfare was a necessary party to the claim of constitutional deprivation, *Glodgett v. Betit*, 368 F.Supp, *supra*, at 215 n.7; and enjoined him to approve the Vermont plan in accordance with the court's interpretation of Section 607(b)(2)(C)(ii). The validity of the court's action depends upon the cogency of "pendent party" jurisdiction. It is apparent at the outset that assuming the power to "pendent parties" under Act III, Section 2, the court did not abuse its discretion in this case. Unlike *Moor, supra*, all the claims sought to be litigated are federal in nature and considerations of economy, convenience and fairness are served by joinder. Pendent jurisdiction is particularly

appropriate in resolving issues raised under the Social Security Act. *Rosado v. Wyman*, 397 U.S. 397, 404 (1970); Note, Federal Pendent Subject Matter Jurisdiction, 73 Col.L.Rev. 153, 165-166 (1973).

In *Moor*, the Court took note of the fact that many courts of appeals have recognized the "existence of judicial power to hear pendent claims involving pendent parties where "the entire action before the court comprises but one constitutional 'case'" as defined in *Gibbs*." 93 S.Ct. at 1797-98. Thus, pendent jurisdiction is a concept of subject matter jurisdiction over claims, not personal jurisdiction over parties. If the claims arise out of a common nucleus of operative fact under *Gibbs*, the fact that the two claims are asserted against different defendants is conceptually irrelevant. Fortune, Pendent Jurisdiction—The Problem of 'Pendenting Parties', 33 Univ.Pitts.L.Rev. 1, 2, 5, 12 (1972). The expansion of federal court jurisdiction finds an analogue in the related concept of ancillary jurisdiction, in the context of compulsory counterclaims under Rules 13(a) and (h) and in the context of third-party claims under Rule 14(a). *Astor-Honor, Inc. v. Grossett & Dunlap, Inc.*, 441 F.2d 627, 630 (2d Cir. 1971).

The "subtle and complex question" the Court perceived in *Moor* and referred to by HEW in its brief was pregnant with overtones of federalism since the claim sought to be appended arose under state law. The "far reaching consequences" apprehended are not present here. For, as Judge Holden said,

> "To the extent there is any doubt about the propriety of extending 1343(3) jurisdiction over the claim against the federal defendant here, the doubt should be resolved in favor of jurisdiction,

> to avoid the anomaly of denial of federal jurisdiction over a suit against a federal officer challenging the constitutionality of a federal statute involving social welfare, an area in which the federal courts have particular expertise. See Friendly, Federal Jurisdiction: A General View, 69-70; 121-122; Wright, Law of Federal Courts 110; Aguayo v. Richardson, 473 F.2d 1090, 1102 (2d Cir. 1973)." *Glodgett v. Betit*, 368 F.Supp. *supra*, at 215 n.7.

In light of the expansive view taken toward federal jurisdiction in *Gibbs* itself, the argument postulated by the County in *Moor* that it offends the notion that federal courts are courts of limited jurisdiction, is unpersuasive, particularly in the context of this case.[10]

Since all the claims in this case stem from a "common nucleus of operative fact", jurisdiction based on the federal claim against the State of Vermont provides a source of jurisdiction over the other constitutional claims raised. *Aguayo v. Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973), *cert. denied* 414 U.S. 1146 (1974); *Glover v. McMurray*, 361 F.Supp. 235, 241 (S.D.N.Y. 1973), *rev'd. on other grounds*, 487 F.2d 403 (2d Cir. 1973) (primary jurisdictional claim held insubstantial).

Assuming the Court had pendent jurisdiction over the claims asserted against the Secretary of Health

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[10] The arguments advanced by Shakman, the New Pendent Jurisdiction of the Federal Courts, 20 Stan.L.Rev. 262 (1968), to the effect that pendent jurisdiction should not be expanded to its full potential within the definition of "case" in Art. III, Section 2, rests entirely on concerns of federalism. See *Almenares v. Wyman*, 453 F.2d 1075, 1084 n. 12 (2d Cir. 1971) *cert. denied* 405 U.S. 944 (1970).

Education and Welfare, it had personal jurisdiction and venue under 28 U.S.C. Section 1391(e). *Liberation News Service v. Eastland*, 426 F.2d 1379, 1382 n.5 (2d Cir. 1970); *Kletschka v. Driver*, 411 F.2d 436 (2d Cir. 1969); *Kelley v. Metropolitan Co. Board of Education*, 372 F.Supp. 528 (M.D. Tenn. 1973); *Macias v. Finch*, 324 F.Supp, 1252, 1254-55 (N.D. Cal) *aff'd. sub nom. Macias v. Richardson*, 400 U.S. 913 (1970); *Powelton Civic Home Owners Ass'n. v. Dept. of Housing and Urban Development*, 284 F.Supp. 809, 833-834 (E.D.Pa. 1968); and Prof. Jo Desha Lucas' comment in Supplement to 1 J. Moore, Federal Practice ¶0.142(7) at 140-41 (1973 Supp.); 2 J. Moore, Federal Practice, ¶4.29 at 84-85 (1973 Supp.) and cases cited.

(c) Assuming the primary jurisdiction conferring claim was insubstantial, the Court had subject matter jurisdiction over plaintiffs' claim that 42 U.S.C. Section 602(b)(2)(C)(ii) violates the Fifth Amendment under 28 U.S.C. Section 1331

In its brief,[11] the government notes that although the plaintiffs alleged jurisdiction under 28 U.S.C. Section 1331, they conceded that their individual claims did not exceed $10,000. Asserting that aggregation is barred under *Snyder v. Harris*, 394 U.S. 332 (1969) and *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the government argues the court is without jurisdiction under 1331. This fails to take into account the "defendants viewpoint" theory and ignores plain-

[11]Brief of HEW, p. 11, note 2.

tiffs' argument that their claims are "common and undivided", permitting aggregation.

(i) The jurisdictional amount is satisfied if the amount of the matter in controversy is determined from the defendant's viewpoint

The object of the jurisdictional amount requirement of 1331 is to keep trivial lawsuits out of the federal courts thereby reducing court congestion. S.Rep. No. 1830, 85th Cong. 2d Sess. at 3-4 (1958); 1958 U.S. Code, Cong. and Admin. News pp. 3099, 3101; Wright, The Law of Federal Courts, ¶32, P. 107 (2d ed. 1970). That interest may be fully served by asking what is actually involved in the case, a common sense approach which would permit viewing the controversy from the viewpoint of either plaintiff or defendant. "[P]articularly where purely injunctive relief is sought, the amount in controversy may be measured by either 'the value of the right sought to be gained by the plaintiff . . . [or] the cost [of enforcing that right] to the defendant.'" *Tatum v. Laird*, 444 F.2d 947, 951 (D.C.Cir. 1971), *rev'd on other grounds*, 408 U.S. 1 (1972). *See also National Welfare Rights Organization v. Weinberger*, 377 F.Supp. 861, 886 (D.D.C. 1974); *Miller v. Standard Fed. Savings & Loan Ass'n.*, 347 F.Supp. 185 (E.D. Mich. 1972).

Although this Court has never squarely decided the question, in *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972), in the course of dismissing an original action, the Court held that the case would satisfy the jurisdictional requirements for an original proceeding in

district court. Mr. Justice Douglas cited authority supporting adoption of a rule which would measure the jurisdictional amount from the point of view of either the plaintiff or defendant. 406 U.S. at 98. *Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604, 606 (10th Cir. 1940); C. Wright, The Law of Federal Courts 117-119 (2d ed. 1970); Note, Federal Jurisdictional Amount: Determination of the Matter in Controversy, 73 Harv. L.Rev. 1369 (1960).

This suit seeks declaratory and injunctive relief against the Secretary of Health, Education and Welfare in his administration of the ANFC-UF program. It is not possible to grant relief for only one recipient and the result would be the same if only one individual had brought the suit. In any event, the district court made its judgment applicable to all persons similarly situated to the plaintiffs.

Should plaintiffs eventually prevail, the Secretary must approve the plans of all states participating in the ANFC-UF program to permit persons eligible for unemployment insurance to exercise an option for ANFC-UF instead. Furthermore, the Secretary has repeatedly said that if the Court upholds the district court decision, he will administer the statute in accordance with the Court's interpretation. The amount of the matter in controversy is, therefore, the amount of federal funds that will be made available to the states as matching funds for the ANFC-UF program. Viewed from the defendant's standpoint, it is beyond doubt that the amount in controversy exceeds $10,000.

(ii) The Court has subject matter jurisdiction over the claims against the Secretary of Health, Education and Welfare under 28 U.S.C. Section 1331 by aggregating the plaintiffs' claims

Section 1331 also provides a source of jurisdiction for plaintiffs' claims against the Secretary if the plaintiffs are permitted to aggregate their claims. In *Troy Bank v. G. A. Whitehead Co.*, 222 U.S. 39 (1911), the Court stated the rule which, to this day, governs when individual claims may be aggregated to meet the jurisdictional amount:

> "When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount." 222 U.S. at 40-41.

The plaintiffs herein do not seek a *pro rata* distribution from the Social Security trust fund. Indeed, they could not do so since the Secretary is under no duty to distribute any part of the trust fund directly to them. Should the plaintiffs prevail, the state will have to expend a sum of money which will be reimbursed in part by HEW.[12] Thus, it is not the individual claims of

[12]The case was initially brought on behalf of the named plaintiffs and all others similarly situated. Plaintiffs sought certification as a class action. The court denied this aspect of the relief sought on the ground that plaintiffs had not sought formal certification. Acting on a post-judgment motion of plaintiffs, the

the plaintiffs which are at issue, but the availability of matching funds to reimburse the state. The Secretary, although concerned that the statute might be held unconstitutional, has no interest in the apportionment of the money among the families of the unemployed. Under these circumstances, the plaintiffs are asserting a "common and undivided" interest in the expenditure of the funds in question, and this collective interest is sufficient to meet the jurisdictional test. See, e.g., *Troy Bank v. Whitehead*, 222 U.S. 39 (1911); *Pinel v. Pinel*, 240 U.S. 594 (1916).

Nothing in *Snyder v. Harris, supra,* or *Zahn v. International Paper Company, supra,* is to the contrary. While the Court in *Snyder* held that separate and distinct claims of class members may not be aggregated to achieve the requisite amount in controversy, the Court re-affirmed the fundamental principle authorizing aggregation where "plaintiffs unite to enforce a single title or right in which they have a common and undivided interest." 394 U.S. at 335. *Zahn* simply extended the holding of *Snyder* to cases in which some of the class members with separate and distinct claims allege damages in excess of the jurisdictional amount.

In *Bass v. Rockefeller*, 331 F.Supp. 945 (S.D.N.Y. 1971) *vacated and cause remanded on other grounds*,

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Court held that the decision would inure to the benefit of all families similarly situated. See *Galvan v. Lavine*, 490 F.2d 1255 (2d Cir. 1973). The aggregation doctrine predated the creation of class actions, *Zahn v. International Paper Co.*, 94 S.Ct. at 509, and are not interdependent devices. The defendants have consistently argued that the cost to the State of Vermont and HEW would be greatly in excess of $10,000.

464 F.2d 1300 (2d Cir. 1971), the court permitted the plaintiffs to aggregate their claims in a suit challenging a New York statute reducing the number of persons eligible for Medicaid which the state sought to implement without prior approval from HEW. After noting that in *Snyder* the Court had instructed the inferior federal courts to apply settled principles of law in determining the matter in controversy, the Court set forth two tests to aid analysis:

> "The interest in distribution test indicates that a common and undivided claim exists when "the adversary of the class has no interest in how the claim is to be distributed among the class members (citation omitted). The second test, the essential party test, allows aggregation of class claims when none of the class members could bring suit without directly affecting the rights of his co-parties." 331 F.Supp. at 950

The Court held those tests were met by the joint interest of the medically needy to proper administration and preservation of the Medicaid funds. See *New Jersey Welfare Rights Organization v. Cahill*, 483 F.2d 723, 725 n.1 (3rd Cir. 1973); *Yanez v. Jones*, 361 F.Supp. 701 (D. Utah 1973); *Bass v. Richardson*, 338 F.Supp. 478, 482 (S.D.N.Y. 1971); *Broenan v. Beaunit Corp.*, 305 F.Supp. 688 (E.D. Wis. 1969) *aff'd* 440 F.2d 1249 (7th Cir. 1970). See generally, Coiner, Class Actions: Aggregation of Claims for Federal Jurisdiction, 4 Memphis State Univ.L.Rev. 427 (1974);

A case of first importance in applying these principles is *Berman v. Narragansett Racing Ass'n, Inc.*, 414 F.2d 311 (1st Cir. 1969) *cert. denied* 396 U.S. 1037 (1970). *Berman*, decided after *Snyder*, concerned a claim by owners of prize winning race horses that

they were entitled to a share of the 'breakage' money, which consisted of the odd cents on a winning ticket. The horse owners claimed that under an agreement with the track, they were to receive a certain percentage of the track's annual share of the purses. The unpaid 'breakage' accumulated over the years, was a sum of several million dollars.

The First Circuit applied the *Pinel* formula and held that the matter in controversy was not the individual claims of the plaintiffs but the recovery of the fund under the alleged agreement. Central to the holding was the fact that there were no contractual rights between the defendants and the individual purse winners.

It was also significant that the plaintiffs had made no specific claims for individual payment. If the plaintiffs were successful in their claim, a distribution formula would have to be established by the court before the members would share individually. By the same token, in the instant case no recovery can be had unless the court declares Section 607(b)(2)(C)(ii) unconstitutional. In that event, the state would have to make disbursements to otherwise eligible families that elected to receive ANFC-UF. HEW would reimburse the state monthly with matching funds. The relief sought from the federal defendant is therefore release of matching funds via reimbursement and not payment of individual claims. This brings the instant case squarely within the *Berman* rationale. As the court said:

> "In cases contemplating the distribution of a fund, it has long been settled that one factor of considerable importance on the issue of whether the plaintiffs' interests are aggregable is whether the defendant has an interest in how the fund will

be apportioned if plaintiffs prevail. (cases omitted). Here, the defendants' only obligation would be to see that 44.7% of their share of the 'breakage' is made available to the class. Under any formula that is finally adopted defendants' liability is the same. The interests of the plaintiffs *vis a vis* the matter in controversy are 'common and undivided' and the fact that their interests are separable among themselves is immaterial." (citations omitted) 414 F.2d, *supra*, at 316.

(d) The District Court had jurisdiction over the plaintiffs' claim that Section 607(b)(2)(C)(ii) is unconstitutional under the Mandamus Statute, 28 U.S.C. Section 1361

The Mandamus and Venue Act of 1962 was intended to remedy the anomaly created by the rule that the district courts, other than in the District of Columbia, lacked jurisdiction to issue mandamus against federal officers. *McIntire v. Wood*, 11 U.S. (7 Cranch) 504 (1873); *Kendall v. U. S. ex rel. Stokes*, 37 U.S. (12 Peters) 524 (1838). See 2 J. Moore, Federal Practice ¶4.29 at 1210-11 (1970).

28 U.S.C. Section 1361 provides:

> "Action to compel an officer of the United States to perform his duty—the district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The key questions in applying the statute are whether there is a "duty owed to the plaintiff" by the federal

defendant and whether the action is "in the nature of mandamus."

Taking the latter question first, it is clear that even under traditional concepts of mandamus, the Secretary has a ministerial duty to approve state plans. 42 U.S.C. Section 602(b).[13] The real issue is whether it makes a difference that the relief requested is contingent upon a finding that Section 607(b)(2)(C)(ii) is unconstitutional. Even under pre-1962 concepts of mandamus jurisdiction, an arbitrary and unconstitutional abuse of power was remedial by mandamus. In *Garfield v. United States ex rel. Goldsby*, 211 U.S. 249 (1908), the plaintiff brought an action for a writ of mandamus against the Secretary of the Interior to compel him to restore him as a member of the Chickasaw Nation which would entitle him to an equal undivided interest in certain land. Plaintiff alleged that he had been enrolled as a member but that his name had been stricken from the rolls without notice and without his knowledge. He alleged that this action was unauthorized, beyond the power of the Secretary and deprived him of valuable rights without due process of law.

The Court held that mandamus is a proper remedy where the federal official has acted wholly without authority of law and discussed at length the constitutional requirements of notice and opportunity to be heard before rights and privileges may be withdrawn. Although the Court held that the Secretary lacked authority to strike previously acquired rights without

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[13] 42 U.S.C. Section 602(b): "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, . . .".

notice and hearing, it is clear that the decision has a constitutional dimension. If all the decision stood for was that the Secretary had exceeded his powers under the statute, it would have been superfluous to explore the due process question.

Should the Court determine that the mandatory exclusion provision violates the due process clause of the Fifth Amendment, it is surely within the Court's power to compel the Secretary to perform his ministerial duty to approve the Vermont plan without that condition. *Workman v. Mitchell*, 502 F.2d 1201, 1205-1206 (9th Cir. 1974); *Smith v. McNamara*, 395 F.2d 896 (10th Cir. 1968); *cert. denied*, 394 U.S. 934 (1969); *National Ass'n. of Government Employees v. White*, 418 F.2d 1126 (D.C. Cir. 1969); *Long v. Parker*, 390 F.2d 816 (3rd Cir. 1968); *Walker v. Blackwell*, 360 F.2d 66 (5th Cir. 1966); *Ashe v. McNamara*, 355 F.2d 277 (1st Cir. 1965); *Kelley v. Metropolitan Co. Board of Education*, 372 F.Supp. 528, 539 (M.D.Tenn. 1973); *Cortright v. Resor*, 325 F.Supp. 797 (E.D.N.Y. 1971) *rev'd on other grounds*, 447 F.2d 245 (2d Cir. 1971) *cert. denied* 405 U.S. 965 (1972); *Murray v. Vaughn*, 300 F.Supp. 688 (D.R.I. 1969); *Carey v. Local Board No. 2*, 297 F.Supp. 252 (D.Conn. 1969), *aff'd*. 412 F.2d 71 (2d Cir. 1969).

In any event, the statutory language and the legislative history indicate that the power granted to the federal courts by Section 1361 is broader than the power that had previously existed to issue writs of mandamus. Byse and Fiocca, Section 1361 of the Mandamus and Venue Act of 1962 and 'Nonstatutory' Review of Federal Administrative Action, 81 Harv.L. Rev. 308 (1967).

The second requirement that there be a "duty owed to the plaintiff" is also satisfied. This is essentially a question of standing. Byse & Fiocca, 81 Harv.L.Rev. at 316. As this court said in *Garfield v. United States ex rel. Goldsby, supra, any person* who will sustain personal injury by the refusal to perform a plain official duty may have a mandamus. 211 U.S. at 261-262.

Because of the two-tiered statutory pattern of the ANFC program, the immediate effect of a mandamus to the Secretary would be to release matching funds to the state. Nevertheless, the injury resulting from the Secretary's approval of the Vermont plan with the disqualification provision results in direct financial injury to the plaintiffs. Because the ANFC-UF program is only viable as long as federal funding is available, 33 V.S.A. Section 2701(1)(c)(3), the Secretary's approval of the plan is a *sine quo non* to any payments by the state to recipients. The Secretary's action thus has a direct and consequential bearing on the individual recipient.

The plaintiffs do not seek to assert the rights of the state against HEW. Albert, Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief, 83 Yale L.J. 425, 465-468 (1974). *But see Kelley v. Metropolitan County Board of Education*, 372 F.Supp. 528, 534-535 (M.D.Tenn. 1973). There can be no question that the plaintiffs have suffered economic injury because of the disqualification provision and they are within the zone of interests sought to be protected by 42 U.S.C. Section 607 and the Fifth Amendment. *Ass'n. of Data Processing Service Organizations v. Camp*, 397 U.S. 16 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970).

(e) The Court has jurisdiction under Section 10 of the Administrative Procedure Act, 5 U.S.C. Section 702.

The issue of whether Section 10 of the Administrative Procedure Act confers jurisdiction is a perplexing one. See *Aguayo v. Richardson*, 473 F.2d 1090, 1101-1102 (2d Cir. 1973) *cert. denied* 414 U.S. 1146 (1974). The lack of clarity of the statutory language and the absence of any meaningful discussion in the legislative history mean that the traditional modes of ascertaining legislative intent are unavailing. See Byse & Fiocca, Section 1361 of the Mandamus & Venue Act of 1962 and "Nonstatutory" Judicial Review of Federal Administrative Action, 87 Harv.L.Rev. 308, 326-328 (1967. In this vaccuum, policy considerations should govern, and policy favors construing Section 10 as a grant of jurisdiction. Jaffe, Judicial Control of Administrative Action 165 (1965); Davis, Administrative Law Treatise, Section 23.02 (Supp. 1970); Byse & Fiocca, 81 Harv.L.Rev. at 329-331. By passage of the Mandamus & Venue Act of 1967, Congress evidenced its intent to decentralize nonstatutory judicial reviews by permitting suits to be brought outside the District of Columbia. As Professor Byse points out, construing Section 10 as a jurisdictional grant does not subject any additional administrative action to judicial review, but would permit a litigant to bring his suit in a local federal court thus giving effect to Congress' expressed intent, albeit in a different context. Byse & Fiocca, p. 330-331. This also has the desireable effect of obviating the jurisdictional amount requirement in actions against federal officials. Id.

On several occasions, this Court has entertained suits that could only have rested on Section 10. *Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955); *Rusk v. Cort*, 369 U.S. 367 (1962) and *Flast v. Cohen*, 392 U.S. 83 (1968). While these cases did not discuss the issue and therefore cannot be said to be dispositive, they are supportive of the view that sound policy objectives would be served by interpreting Section 10 as a jurisdictional statute.

III.

THE COURT PROPERLY HELD THAT 42 U.S.C. SECTION 607(b)(2)(C)(ii) PROVIDES FAMILIES WITH AN OPTION AND EXCLUDES FAMILIES FROM ANFC-UF BENEFITS FOR ONLY THOSE WEEKS IN WHICH AN OTHERWISE ELIGIBLE FATHER ELECTS TO RECEIVE UNEMPLOYMENT COMPENSATION

(a) The statutory language is clear, making it unnecessary to explore the purposes of the statute by resorting to the legislative history[14]

It is well settled that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. *Osaka Shoshen Kaisha Line v. United States*, 300 U.S. 98, 101 (1937);

[14]Of course, if this Court agrees with plaintiffs' argument set out in Section III(b) that the legislative history is inconclusive, it becomes unnecessary to decide whether it would be improper to consider that history.

Kuehner v. Irving Trust Co., 299 U.S. 445, 449 (1937); *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85, 89 (1935); *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77 (1932); *Wilbur v. United States, ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U.S. 231, 237 (1931). The District Court held that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." *Glodgett v. Betit*, 368 F.Supp. 211, 217 (D.Vt. 1973). The Court is not confronted, as it was in *Richards v. United States*, 369 U.S. 1, 11 (1962), with an inherently ambiguous phrase such as "law of the place;" or with imprecise words such as "restrain or coerce," at issue in *"NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 184 (1967); or language which "does not make clear its intended scope." *Allen v. State Board of Elections*, 393 U.S. 544, 570 (1969).

The Solicitor General relies on *United States v. American Trucking Associations*, 310 U.S. 534 and *Cass v. United States*, 417 U.S. 72, for the proposition that there is no "rule of law" which forbids the Court from turning to extrinsic aids which are clearly relevant to a construction of the words in question. Brief of HEW p. 15.

American Trucking began its discussion by saying that there is no more persuasive evidence of the purpose of a statute than the words chosen by the legislature to make its purpose known. "In such cases," the Court said, "we have followed their plain meaning." It is where the meaning has led to absurd or futile results, or unreasonable ones plainly at variance with

the policy of the legislation as a whole that has taken the Court beyond the literal words. 310 U.S. at 543.

Cass has not wiped out all vestiges of that doctrine. In footnote 5, the Court considered arguments that the statutory language was clarified in other portions of the Act and in other statutes with similar provisions. The Court found that these references did not remove the ambiguity inherent in the statutory language. But the Court made it unmistakeably clear that its perusal of other related statutory sections would precede resort to the legislative history, and that if the language was plain and unambiguous that second step need not be reached.

In *Cass* the Court observed that the controlling consideration is to ascertain what Congress intended. If this can be gleaned from the face of the statute, the language should be given its plain meaning. *United States v. American Trucking Associations*, 310 U.S. at 543, and cases cited note 18. As the Court said in *Helvering v. City Bank Co.*, 296 U.S. at 89, "We are not at liberty to construe language so plain as to need no construction, or to refer to committee reports where there can be no doubt of the meaning of the words used." See also, *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77, 83.

The plain meaning of Section 607(b)(2)(C)(ii) is that Congress was concerned that a family could receive *concurrent* payments of unemployment compensation and ANFC-UF. See *Macias v. Finch*, 324 F.Supp. 1252, 1257 (N.D.Cal. 1970). Therefore, it made clear that for any week in which the father *received* unemployment insurance, the family could not also receive ANFC-UF. This left it open to the individual to reject his unemployment benefits if the ANFC was higher.

Internal evidence that Congress was capable of making a distinction between "receipt" of unemployment compensation and "eligibility" for benefits is found in another subsection of the same statute, enacted on the same day as Section 607(b)(2)(C)(ii). Section 607(b)(i)(C) sets forth the qualifications of prior attachment to the labor force required for state participation in the AFDC-UF program. A family will qualify only if the father (1) has six or more quarters of work in any thirteen calendar quarter period ending within a year of applying for ANFC or (2) if he received *or was qualified to receive* unemployment compensation within the meaning of subsection (d)(3) of Section 607. Section 607(d)(3)(A) states that an individual shall be deemed "qualified for unemployment" if "he would have been eligible to receive such unemployment "compensation upon filing application . . ."

The failure of Congress to utilize similar language in Section 607(b)(2)(C)(ii) or to incorporate Section (d)(3)(A) by reference suggests that a family was to be excluded from ANFC-UF only for each week in which the father actually received unemployment compensation.

This was a view originally shared by the Department of Health, Education and Welfare.[15] Thus, in footnote two of its initial brief in the District Court, the government unequivocally stated:

> "It is the receipt of unemployment benefits and not merely eligibility for such benefits which is the

[15]See brief of the Department of Health, Education and Welfare dated August 11, 1972, p. 7 note 2, and p. 17.

> operative factor here; Section 607(b)(2)(C)(ii) turns on receipt of unemployment compensation, not eligibility for such benefits."

The Court relied on this statement as accurately reflecting the Government's position. *Glodgett v. Betit*, 368 F.Supp., *supra*, at 217.

HEW seeks to "clarify" its position by arguing that Congress did not refer to (d)(3) because it did not want to penalize the father during the waiting period between application and receipt of unemployment benefits. Brief of HEW, pp. 15-17 n.4. However, (d)(3) would not require that result. Read in conjunction with b(2)(c)(ii), it would make a family ineligible for ANFC for any week in which the father received his unemployment benefit or would have received it had he filed his application. This would have achieved precisely the result which the government claims was intended by Congress.

Moreover, the Secretary argues elsewhere that the phrase "qualified to receive" be read into b(2)(C)(ii). Brief of HEW p. 22. This is inconsistent with his position in footnote 4.

The state takes a different approach. It postulates a *conceptual* distinction between b(2)(C)(i), which limits eligibility to individuals with a prior attachment to the work force, and b(2)(C)(ii) which does not. Since the latter provision has nothing to do with prior work history, the state argues, there was no need to speak in terms of "qualifications" to receive benefits. Brief of State of Vermont, p. 18. This is a *non sequitor*.

The problem with the state's hypothesis is that the definition in d(3) would squarely fit the families it claims Congress intended to exclude: those in which the

father would have been eligible if he filed an application. The state admits this in footnote 11 of its brief.

The state also argues that its interpretation is compelling, "especially in view of the section's traditional interpretation." But traditionally, the section permitted supplementation of unemployment benefits, not total exclusion. Neither logic nor tradition supports the state's argument.

The defendants urge the Court to apply the rule that it will look beyond the words where a literal reading would lead to absurd or futile results or an unreasonable one "plainly at variance with the policy of the legislation as a whole." *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400 (1966). Brief of State of Vermont pp. 11-12. However, the literal reading given the statute by the court produces none of these.

Ensuring a subsistence income for all children made needy due to the unemployment of their fathers can hardly be considered absurd or futile. Nor does the court's construction conflict with the intent of other relevant provisions of the same statutory scheme. The defendants rely on 42 U.S.C. Section 602(a)(7) and its implementing regulations to support their thesis that an irreconcilable conflict results from the court's application of the statute. The conflict said to arise is illusory.

42 U.S.C. Section 607(a)(7) simply instructs the state agency to take income and other resources into consideration in determining the need of applicants for AFDC. But receipt of unemployment compensation works a complete disqualification from the program regardless of need. As the state pointed out in footnote 14 of its Jurisdictional Statement, unemployment

compensation as a resource in *sui generis* in requiring automatic disqualification from AFDC benefits. The key phrase in 607(a)(7) is "in determining need." Defendants would read this language out of the statute.

The reference to the Handbook of Public Assistance Administration on pages 14 and 15 of the state's brief all predate the enactment of Section 607(b)(2)(C)(ii) in 1968. Therefore, it is not surprising that unemployment compensation is referred to as a resource. From 1961 to 1968 it was optional with the states to supplement unemployment compensation with AFDC payments. It must also be remembered that where a family is eligible for ANFC due to the death, continued absence or disability of a parent, unemployment compensation is still considered a resource for determining the amount of the grant.

The superseding regulations in 45 C.F.R. 233.20(a)(3)(ii)(c) and 45 C.F.R. 233.20(a)(3)(ix), cited by the Commissioner, are similarly inapposite. The scope of those regulations is placed in proper perspective by 45 C.F.R. 233.20(a):

> "*Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD, or AABD must, as specified below:
>
> (1) *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal Statute."

Since unemployment compensation is statutorily treated differently from other resources in that recipients are

disqualified regardless of need, these regulations do not apply.

The category of Dependent Children of Unemployed Fathers is separately treated in 45 C.F.R. 233.100. Those regulations lend no support to the appellants' position. 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language in providing for the denial of aid to a dependent child "with respect to any week for which such child's father *receives* unemployment compensation. . .". The regulations also emphasize the difference between the statutory language in Section 607(b)(1)(c) and 607(d)(3) defining the term "qualified for unemployment." 45 C.F.R. 233.100(a)(3)(ii) and 45 C.F.R. 233.100(a)(3)(v).

Finally, the state argues that the District Court's reading of Section 607(b)(2)(c)(ii) produces extraordinary results by (1) shifting the burden of supporting unemployed fathers and their families from employer contributions to welfare aid, and (2) by unjustly enriching employers by reducing their rate of contribution to the unemployment fund over a period of time.[16]

But the incidental effects on the unemployment insurance fund are not "extraordinary results" when the differing purposes of the two programs are taken into consideration. "Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed." Report of Senate Finance

[16] In its jurisdictional statement, the state also argued that the court's interpretation would encourage "program shopping". Apparently, the state has abandoned this argument.

Committee, No. 628 74th Cong. 1st Sess. p. 11 (1935). As this Court recently said in *California Human Resources Dept. v. Java*, 402 U.S. 121, 130 (1971):

> "It is true, as appellants argue, that the unemployment compensation insurance program was not based on need in the sense underlying the various welfare programs that had their genesis in the same period of economic stress a generation ago. A kind of "need" is present in the statutory scheme for insurance, however, to the extent that any "salary replacement" insurance fulfills a need caused by lost employment, the objective of Congress was to provide a substitute for wages lost during a period of unemployment not the fault of the employee."

The Commissioner argues that it was originally the intention of Congress, as revealed in the legislative history of 1935, that unemployment compensation would be the first line of defense for the unemployed, providing a subsistence income without the necessity of resorting to relief. But the state acknowledged in its Jurisdictional Statement that the distinction was "somewhat obscured" in 1961 when Congress expanded the definition of "dependent child" with the express purpose of including the children of the unemployed. Jurisdictional Statement of the State of Vermont, pp. 17-18. The mere fact that in 1935 Congress recognized that unemployment compensation would incidentally benefit many children in the homes of unemployed workers does not mean that in 1968 it would brook a harsh determination against those children.[17]

[17]Aside from the fact that it is sophistry to speak in terms of "shifting the burden of support" when the purposes of the programs are dissimilar, it should be remembered that not all families who would prefer to exercise the option will automatically qualify for AFDC-UF. For example, the father must meet the eligibility requirements of Section 607(b)(1) and cannot have over $1800 in resources to be eligible.

Nor would the Court's application of the statute necessarily inure to the economic benefit of employers. Since employers are segregated into rate classes for purposes of determining their contribution rate to the fund, 21 V.S.A. Section 1326(A)(2), their rate would change only if their class changed.[18] Moreover, even if the contribution rate did decline, this cannot be characterized as a "windfall" or "unjust enrichment." It simply means that the employer would not be taxed at as high a rate in the future because his employees were drawing less from the fund.

It is not an "extraordinary result" that Congress should make provision for those families in which the amount of available unemployment compensation falls far below the subsistance level as defined by the State for purposes of its ANFC program. Indeed, it would be extraordinary if some children were deprived of subsistence solely due to their father's eligibility for unemployment compensation.[19]

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[18]Whether or not the employer's class changed would depend on a number of variables including the amount of the employer's benefit ratio, the amount of his annual taxable payroll and its relationship to annual taxable payrolls of other employers. 21 V.S.A. Section 1326(A)(1). The classes are determined by cumulative payroll percentage limits. (Col. B of Table accompanying 21 V.S.A. Section 1326). Absent the right combination of factors, an employer whose taxable payroll is near the ceiling would not have his contribution rate reduced.

[19]This result would be particularly irrational in light of the fact that a man who quits his job "voluntarily without good cause attributable to his employer" or who is discharged for misconduct connected with work is disqualified from receiving unemployment compensation for up to twelve weeks. 21 V.S.A. Section 1344. His family will be eligible for the higher ANFC benefits. It is the man who leaves for good cause whose family is penalized. *Francis v. Davidson*, 340 F.Supp. 351 (D.Md.) *aff'd.* 409 U.S. 904 (1972).

It has frequently been said, usually in the context of sustaining legislation against constitutional attack, that there are many constitutionally permissible ways in which Congress may seek to deal with a problem. *Jefferson v. Hackney*, 406 U.S. 535, 546-547 (1972). In 1961, Congress was concerned that fathers were deserting their families so that the remnants would be eligible for ANFC under 42 U.S.C. Section 606. The ANFC-UF program was the outgrowth of that concern. Paradoxically, the defendants' interpretation of 607(b)(2)(C)(ii) would directly undercut that objective. A father eligible for unemployment insurance that is less than the family's ANFC entitlement could desert the family. Not only would the remnant be eligible for ANFC under Section 606, but the father could draw unemployment compensation to support himself during the period of his unemployment. Surely, Congress could not have intended such a catastrophic result.

Where the language of Section 607(b)(2)(C)(ii) is "crystal clear," *Allen v. State Board of Education*, 393 U.S., *supra*, at 570, internally consistent, *Malat v. Riddell*, 383 U.S. 569, and compatible with other provisions of the AFDC program, there is no occasion to depart from the literal meaning of the statutory language. *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 492 (1947); *Kuehner v. Irving Trust Co., supra; Wilbur v. United States, ex rel. Vindicator Consolidated Gold Mining Co., supra; Ex Parte Collett*, 337 U.S. 55, 61 (1949).

(b) Assuming the circumstances of this case require resort to the legislative history, that history is at best inconclusive and, in any event, is not at variance with the district court's reading of the statute

It is clear that when Congress created the optional unemployed parent program in 1961, it left it up to the individual states to decide whether AFDC could be used to supplement unemployment compensation.[20] This was an early recognition that state unemployment compensation benefits might fall below the level of subsistence. The legislative history since 1967 is unilluminating as to Congress' intention regarding the impact that eligibility for unemployment compensation would have on eligibility for AFDC-UF.

The House Ways and Means Report[21] simply states that "Under the committee bill, states must exclude from the program anyone who *is receiving* unemployment compensation."

The report of the Senate Finance Committee[22] was

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[20]Of the twenty-two states that had the UF program in effect in 1966, only three (Maryland, Arizona and West Virginia) considered receipt of unemployment insurance a bar to eligibility. The other states treated unemployment benefits as a resource in determining need. Characteristics of the Unemployed Parent segment of state programs for Aid to Families with Dependent Children Approved and in Operation, Dec. 1, 1966. Summary reproduced as Appendix A.

[21]H.R. Report No. 544 (accompanying H.R. 12080) 90th Cong. 1st Sess. at 108 (1967).

[22]S. Fin. Comm. Resp. No. 744, 90th Cong. 1st Sess. at 160 (1967).

concerned that under the House bill a family was excluded from AFDC for any month in which the father received unemployment compensation.

> "The House bill prohibits the payment of assistance (with federal participation) to a family that receives any amount of unemployment compensation during the same month. Since the unemployment compensation may be for only a small part of the month, a family's income could be far below the state's standard of need and still the family would be ineligible for assistance. The committee bill returns to existing law under which the choice "as to whether unemployment compensation payments can be supplemented, is left to the states."

The conference report[23] sheds no light on the matter and, in fact, muddies the waters even more. The report states:

> "Unemployed Fathers Under AFDC"
>
> "Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House Bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid and fathers who receive (or are qualified to receive) any unemployment compensation under state law."
>
> "The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father

[23]H.R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967).

receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill).

"The Senate recedes (except on the conforming amendments and effective date provisions)."

The committee was clearly talking about the *eligibility* requirement that the father either have six quarters of work in the previous thirteen calendar quarters or been receiving or qualified to receive unemployment compensation within the year prior to his applying for ANFC, and not the exclusion of families in which the father is currently receiving unemployment compensation. The second paragraph simply describes the amendment offered by the Senate which would have excluded these two eligibility provisions and retained the optional supplement approach of the 1961 legislation. While the syntax is confusing, it is clear that the committee was describing two quite different proposals. This reading is bolstered by the fact that there is nothing in the House report to indicate that families would be excluded if the father is presently eligible for unemployment compensation but refuses to accept it.

The Secretary argues against this interpretation "because the conference report refers to the *exclusion* of fathers who receive (or are qualified to receive) any unemployment compensation." Brief of HEW p. 22. Since Section 607(b)(1)(C) is an inclusionary rule and 607(b)(2)(C)(ii) is an exclusionary rule he argues that the entire report must be referring to the latter.

The Secretary overlooks the fact that in the very same sentence, the report refers to the *exclusion* of

"fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application of aid, . . .". Since this is clearly a requirement of 607(b)(1)(C), it demonstrates the futility of parsing the sentence as the Secretary suggests. The most plausible reading is that the Conference Committee described both elements of 607(b)(1)(C) in the negative, without attaching any substantive importance to it. Significantly, the House Report spoke of *excluding* from the program "those fathers who have not been in the labor force, or whose attachment to the labor force has been casual." H.R.Rep. No. 544, 90th Cong. 1st Sess. 108 (1967).

The State argues that it is significant that the words "or qualified to receive" are enclosed in parentheses, and that this is evidence that the Committee read "receives" to include eligibility. This does not explain why Congress spelled it out in 607(b)(1)(C) and not in 607(b)(2)(C)(ii). Congress obviously saw a distinction, a conclusion which is reinforced by the fact that both sections were enacted on the same day. In any event, this Court has refused to draw any inferences from the appearance of parenthetical clauses in the legislative history which have been elided in the final draft of the legislation. *Gemsco, Inc. v. Walling*, 324 U.S. 244, 263-65 (1945).

Plaintiffs' analysis is furthered by the 1968 conference report:[24]

> "Section 302. *Aid to families with dependent children in case of unemployed fathers receiving unemployment compensation.*

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[24]S. Rep. No. 1014, 90th Cong. 2d Sess. 9 (1968).

Section 302 of the conference substitute corresponds to section 14(c) and (d) of the Senate amendment. Section 14(c) and (d) eliminated the provision (in sec. 407(b)(2)(C) of the Social Security Act) prohibiting the payment of AFDC to a family on the basis of the father's unemployment for any period in which the father receives unemployment compensation under State or Federal law, and substituted a provision (in sec. 407(c)) giving each state the option under the State plan to deny all or any part of the aid otherwise payable under the plan to a family on the basis of the father's unemployment for any month if the father received unemployment compensation under State or Federal law for any week or part of which is included in such month. There was no corresponding provision in the House bill.

"Section 302 of the conference agreement instead modifies section 407(b)(2)(C) of the act to "prohibit the payment of AFDC to a family on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation under State or Federal law. It is the intention of the conferees that if the father receives unemployment compensation for all the weeks which fall wholly or partly in a month, the family could not under any circumstances receive all AFDC payment for that month; and if the father receives unemployment compensation for one or more but less than all the weeks which fall (wholly or partly) in a month, the family's AFDC payment will be reduced by the percentage of the month represented by such week or weeks (or by the portion of such week or weeks which falls in such month)."

Again, the conference committee speaks solely in terms of the father's "receipt" of unemployment compensation and not his eligibility to receive such benefits.

On pages 22 and 23 of his brief, the Solicitor General refers to a Report of the Senate Finance Committee to support his interpretation of Section 607(b)(2)(C)(ii). However, the language he quotes is merely a heading preceding the names of certain persons who gave testimony before the Senate Committee. This is hardly persuasive of Congress' intention in enacting the disqualification provision.[25]

The State refers to the H.R.Rep. No. 544, 90th Cong. 1st Sess. 2 (1967), for the proposition that Congress possessed a "firm intent of reducing the AFDC rolls." While it concedes that this portion of the House Report did not have reference to 607(b)(2)(C)(ii), the State argues that Congress could not have intended to permit unemployed fathers to reject their entitlement and join the welfare rolls.

The Committee's discussion of the provision itself leaves no doubt that it could distinguish eligibility for

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[25]These "headings" purport to summarize the testimony of the persons whose names appear under them. The following caveat appears as an Editor's Note:

> "Editor's Note.—Due to the voluminous oral and written testimony on H.R. 12080 and related proposals, in order for any summary to be useful, it is necessary to broadly categorize positions of organizations and individuals. In so doing, it should be understood that it is not possible to include all of the qualifications or conditions with which such organizations and/or individuals may have accompanied such position on each issue. Nor is it possible to attempt an interpretation of a stated position. Nevertheless, an objective attempt has been made to present fairly the position of each witness." Brief Summary of Major Recommendations Presented in Oral and Written Statements During Public Hearings before Senate Committee on Finance, on H.R. 12080, 90th Cong., 1st Sess., p. vii (Committee Print 1967).

unemployment benefits from receipt of unemployment benefits.[26] Furthermore, an intent to reduce the welfare rolls solely to protect the fisc is an impermissible legislative purpose. *Shapiro v. Thompson*, 394 U.S. 618, 633.

In *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77, the Court discussed the role played by Congressional Committee Reports in the interpretation of statutes:

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[26] "This program was originally conceived as one to provide aid for the children of unemployed fathers. However, some States make families in which the father is working but the mother is unemployed eligible. The bill would not allow such situations. Under the bill, the program could apply only to the children of unemployed fathers. Moreover, it is the intent of your committee to exclude from the program those fathers who have not been in the labor force, or whose attachment to the labor force has been casual. Under the bill, Federal sharing will be limited to cases where the father has had at least six quarters of work in any 13-quarter period ending during the year before application for assistance. A quarter of work is one in which the father had earnings of at least $50. A quarter of coverage under the social security program would also be a "quarter of work" so that welfare agencies could use the social security earnings record to verify eligibility under this provision. If a father had been eligible for unemployment compensation or would have been eligible if his employment had been covered within the year before applying for assistance the six quarters of work requirement would not have to be met. In addition, it is provided that the father must have been unemployed (as defined by the Secretary) for at least 30 days prior to receipt of assistance. Under the committee bill, States must exclude from the program anyone who is receiving unemployment compensation." H.R. Report No. 544, 90th Cong., 1st Sess. at 108 (1967).

"In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. *Wisconsin R.R. Comm. v. C., B. & Q. R. Co.*, 257 U.S. 563, 588-589; *Penna. R. Co. v. International Coal Co.*, 230 U.S. 184, 199; *Van Camp & Sons v. American Can Co.*, 278 U.S. 245, 253. Like other extrinsic aids to construction their use is 'to *solve*, but not to *create* an ambiguity.' *Hamilton v. Rathbone*, 175 U.S. 414, 421. Or, as stated in *United States v. Hartwell*, 6 Wall. 385, 396, 'If the language be clear it is conclusive. There can be no construction where there is nothing to construe.' The same rule is recognized by the English courts."

The various congressional reports concerning the development of the ANFC-UF program fail to shed light on the issue presented in this case. First, to the extent that they discuss receipt of unemployment compensation, they address a different issue: the problem that arises when a family receives UCC for a fraction of the month.[27] Secondly, if the discussions in

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[27]In 1967, Section 607(b)(2)(C)(ii) excluded families from ANFC-UF for any *month* in which the father received unemployment compensation. Since unemployment compensation is paid on a weekly basis, this meant that if a father's benefits ran out in the first week of the month, he could not get ANFC until the next month. Remarks of Hon. Wilbur Cohen, Undersecretary of HEW, Hearings before S.Comm. on Finance, 90th Cong. 1st Sess. (H.R. 12080) 268-269. The 1968 amendments changed the disqualification from a month to a week.

It is apparent that this is a problem that would affect all recipients of unemployment compensation, no matter how high

these reports may properly be extrapolated, they confuse rather than clarify the issue. To the extent that the reports speak in terms of "receipt" of unemployment compensation, they support a literal reading of 607(b)(2)(C)(ii). The Conference Committee Report, relied on heavily by the defendants, is unilluminating. It cannot be said with certainty whether the phrase "qualified to receive" pertains to 607(b)(1)(c) or (b)(2)(C)(ii). The Committee Print referred to by HEW carries its own admonition that it may not accurately summarize the testimony of the witnesses. These reports do not solve any ambiguity in the statutory language. Instead, they produce uncertainty and obfuscate the clear meaning of 607(b)(2)(C)(ii). The legislative history is at best inconclusive, and does not justify deviating from the plain meaning of the statute. *United States v. Oregon*, 366 U.S. 643, 648 (1961). As this Court said in *Ex Parte Collett*, 337 U.S. 55, 61 (1949):

> "The short answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of the statute cannot be overcome by a legislative history which, through strained processes of

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their benefit. For example, a father could be drawing weekly unemployment benefits that, when figured on a monthly basis, exceed the state standard of need. Thus, given an option, he would choose to take unemployment benefits over welfare. But if those benefits ran out in the first week of the month, under the 1967 legislation he could not receive welfare for the remainder of the month. This was the problem addressed by Congress in 1968, and not whether the father might elect to forego the unemployment benefits in the first place.

deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.' *Gemsco v. Walling*, 324 U.S. 244, 260 (1945). This canon of construction has received consistent adherence in our decisions." (Note 12 citing cases is omitted).[28]

(c) Under the circumstances of this case, the interpretation given the statute by HEW is not entitled to special consideration

Defendants argue that since HEW is the federal agency charged with administration of the Social Security Act, deference must be given to its interpretations. Several considerations militate against the application of the rule in this case.

First, this Court has recently said, "the sound principle of according deference to administrative practice normally applies only where the relevant statutory language is unclear or susceptible of differing interpretations." *Shea v. Vialpando*, 416 U.S. 251, 94 S.Ct. 1746, 1754 n. 11 (1974). As pointed out above, the statutory language is clear.

Secondly, HEW's interpretation may be disregarded, particularly where it is at variance with its own regulation's clear language. *Francis v. Davidson*, 340 F.Supp. 351, 365-66 (D.Md.) *aff'd* 409 U.S. 904 (1972). 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language that it is the "receipt" of unemployment benefits that triggers the disqualification. Moreover,

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[28]The rule is the same for statutory revisions. See *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 45 (1895) cited in *Ex Parte Collett, supra*, footnote 12.

during the course of this litigation, HEW has altered its position. Brief of HEW pp. 15-17 n. 4. This in itself is reason to dispense with its views. *DeSylva v. Ballentine*, 351 U.S. 570, 577-78 (1956).

Thirdly, in light of the purposes of the ANFC program, the Secretary has a heavy burden to demonstrate a congressional intention that otherwise eligible children must be excluded. Such exclusions should be *clearly evidenced* from the Social Security Act or its legislative history. *Townsend v. Swank*, 404 U.S. 282, 286 (1971); *Carver v. Hooker*, 501 F.2d 1244, 1248 (1st Cir. 1974); *Doe v. Lukhard*, 363 F.Supp. 823, 828-29 (E.D. Va. 1973) *aff'd* 493 F.2d 54 (4th Cir. 1974); *Alcada v. Burns*, 494 F.2d 743 (8th Cir. 1974); *Carleson v. Remillard*, 406 U.S. 598 (1972).

A final consideration in determining the meaning of 607(b)(2)(C)(ii) is that the construction made by the district court may be necessary to forestall a successful equal protection attack on the statute. *Carver v. Hooker*, 501 F.2d, *supra*, at 1248. This Court has said that "[a]ny doubt must be resolved in favor of [a] construction to avoid the necessity of passing upon the equal protection issue." *Townsend v. Swank*, 404 U.S., *supra*, at 291.

(d) The District Court's interpretation does not conflict with the purposes of the unemployment compensation program

All parties to this case agree that unemployment compensation and ANFC are mutually exclusive programs. We differ on the consequences of that relationship.

There is no question that when unemployment compensation was first created in 1935, it was intended to be the "first line of defense against unemployment". But subsequent developments in the growth of a legislative program may render legislative interests once considered relevant no longer legitimate. *King v. Smith*, 392 U.S. 309, 320-21 (1968). This was the case with the "suitable home provision" of the 1935 Social Security Act. Id at 321-327. The enacting Congress expected the Act to be molded and developed by future legislatures and later congressional pronouncements must be considered indicative of an evolving legislative intention. *Carver v. Hooker*, 501 F.2d at 1246-1247 n.5.; see Comm. on Ways and Means Report, H.R.Rep. No.615, 74th Cong. 1st Sess. 16-17 (1935).

In 1935, the assistance program for needy children did not extend to children of the unemployed. While Congress hoped that some children would be benefitted by the unemployment insurance program, it was emphatically an insurance program unrelated to individual family needs. W. Haber & M. Murray, Unemployment Insurance in the American Economy: An Historical Review and Analysis 42 (1966). Witte, Development of Unemployment Compensation, 55 Yale L.J. 21 (1945).

1961 saw a volte-face with respect to the programs. Recognizing that fathers were deserting their families so that they could be eligible for ANFC, Congress expanded the program to include the children of the unemployed. Congress was also aware that in some instances, unemployment compensation benefits might fall below the level of subsistence as set by the state. Therefore, it permitted the states to supplement

unemployment insurance with ANFC-UF. This refutes the Secretary's claim that "the history of Congress' adjustments of the relationship between AFDC and unemployment compensation demonstrates that Congress intended that AFDC not be available when unemployment compensation can be obtained." Brief of HEW, p. 19.

There is not one word in the legislative history of 1967-1968 that Congress felt the unemployment insurance system was being undercut or that accomplishment of its objectives was jeopardized by supplementation of benefits. In this connection, it is noteworthy that Congress did not alter the treatment of unemployment insurance as a resource where a child is deprived of parental support due to the death, absence or disability of his parent. 42 U.S.C. Section 606.

The Secretary argues that the effect of the District Court's decision is to subsidize unemployed *parents* through the AFDC program. Brief of HEW p. 26. This is simply untrue. Under the categorical assistance program, the parent is the conduit through which funds are channelled to the child. *Cooper v. Laupheimer*, 316 F.Supp. 264, 269 (E.D.Pa. 1970).

The state argues that the court's ruling results in shifting the burden of supporting families of unemployed fathers from unemployment insurance to the AFDC program. This is undoubtedly true for those families where the amount of unemployment benefits falls below the state need standard and the family is otherwise eligible for ANFC. But this is not a compelling argument where one program is based on need and the other on insurance concepts. In fact, by

permitting the family an option, Congress may have been motivated to protect the unemployment insurance system. As one commentator has observed:

> "Absence of public assistance for the unemployed in many states and localities brings pressure on the unemployment insurance program to provide for longer and longer duration of benefits and lower eligibility requirements because the unemployed have no other place to turn for income maintenance. Therefore, the integrity of unemployment insurance requires a complementary program of unemployment assistance. This problem becomes particularly acute in times of recession when unemployment becomes prolonged for large numbers of workers."
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> W. Haber and M. Murray, Unemployment Insurance in the American Economy: An Historical Review and Analysis 482 (1966).[29]

Contrary to the State's argument, the unemployment insurance program is not in danger of duplicating the purpose of ANFC-UF to meet the needs of the children of the unemployed. The statistics compiled by the state and presented in its brief at pages 31 and 32 are misleading. While it is true that average weekly unemployment compensation benefits have increased, these higher payments do not necessarily benefit the

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[29]This is not a hypothetical concern. The Vermont unemployment fund is seriously depleted. Since January, 1974, the Department of Employment Security has borrowed $8,411,500 from the reserve fund with which to pay benefits. An additional $2.9 million loan will be credited to Vermont on February 1, 1975. Conversation with Bill Robinson, Director, Unemployment Insurance Division on January 21, 1975.

ANFC-UF population.[30] Studies have shown that AFDC fathers are at the low end of the distribution of male workers in terms of education, jobs and earnings. Based upon a 1973 study conducted by HEW, it may be concluded that unemployment insurance payments are actually declining relative to ANFC-UF for this population.[31]

These statistics serve to point up an important flaw in the defendants' arguments that the disqualification is a reasonable means by which to ensure the growth of the unemployment insurance program. That program is designed for persons of all income levels. There will always be low paying jobs held by persons with marginal abilities and limited education. Congress recognized this in 1961 when it permitted the states to supplement unemployment insurance with ANFC. It is not likely that Congress would have cut these children off without some discussion.

The consequence of the defendants' position is to create two classes of similarly situated children, one deprived of subsistence as determined by the state solely because the father is eligible for unemployment insurance, no matter how small. As the Court said in *Carleson v. Remillard, supra*:

> "We cannot assume here, anymore than we could in *King v. Smith, supra,* that while Congress 'intended to provide programs for the economic security and protection of *all* children,' it also 'intended arbitrarily to leave one class of destitute

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[30]See Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance, Appendix B of this brief.

[31]See Appendix B, pp. 3-9.

children entirely without meaningful protection.' 392 U.S. at 330"

Carleson v. Remillard 406 U.S. at 604.

IV.

42 U.S.C. SECTION 607(b)(2)(C)(ii), ASSUMING IT CREATES AN AUTOMATIC AND TOTAL DISQUALIFICATION FROM ANFC-UF, IF THE FATHER IS QUALIFIED TO RECEIVE UNEMPLOYMENT COMPENSATION, VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

(a) The Court should reach and decide the constitutional issue on the merits even though it was not passed upon by the district court

As a consequence of its finding that 607(b)(2)(C)(ii) affords the father an option to reject unemployment benefits, the district court applied the "rule of necessity" and declined to reach the constitutional issues. It is well established, however, that the prevailing party has the right to seek affirmance on any ground which has support in the record. *Dandridge v. Williams*, 397 U.S. 471 n.6 (1970); *United States v. Ballard*, 322 U.S. 78, 88 (1944); *Langnes v. Green*, 282 U.S. 531, 538-39 (1931).

This Court has never articulated any standards by which to determine when it will reach a constitutional argument briefed and argued but not passed upon by the lower court. Adequate presentation to the Supreme

Court is obviously a consideration. *United States v. Ballard*, 322 U.S. at 88; *Aetna Casualty Co. v. Flowers*, 330 U.S. 464, 468 (1947). Surely, the breadth and immediacy of the issue, the number of persons affected and the consequences of a lack of a dispositive ruling taking the realities of the situation into consideration, should be part of that determination. While the informed judgment of the lower courts is desireable, particularly where the issue is of constitutional magnitude, there may be cases which warrant immediate consideration. In *Langnes v. Green*, 282 U.S. *supra*, at 538, the Court indicated that it would reach the issue if there is "good reason to do so." Plaintiffs believe this is such a case.

The country is in the midst of an economic recession. Unemployment is at the highest level in thirteen years. The national rate of unemployment is 7.1% and is expected to rise to 8%. The insured unemployment rate in Vermont soared to 9.2% for the week ending January 14, the highest rate in almost fourteen years. St. Albans, Vermont has an unemployment rate of 17.7%. Six of the eleven areas of the state have insured jobless rates of 11% or higher. The number of persons filing claims for benefits jumped from 14,000 to 15,675 in one week. Resolution of the issue presented to this Court is of critical importance not only to the children in Vermont who will be deprived of a subsistence level of income if the district court is reversed, but also for the thousands of children throughout the country who would be eligible for ANFC but for the disqualification provision.

The Department of Health, Education and Welfare has briefed the constitutional issue presented by this

case not only in the District Court of Vermont but also in a case raising the identical issues in the District of Maryland. *Salamone v. Mason*, Civ.Action No. M-74-656 (D.Md. filed June 25, 1974). Plaintiffs have requested the defendants to brief those issues for this Court.

The Solicitor General asserts that it would be "inappropriate" to reach the constitutional issue and gives the reason that "the claims should be considered by the district court in light of a proper construction of the statute." Whatever benefit the District Court might derive from such a clarification, surely it is overriden by the desparate financial plight faced by the affected families. Plaintiffs respectfully urge the Court to reach and determine those issues without a remand.

(b) 607(b)(2)(C)(ii) violates the due process clause of the Fifth Amendment because it discriminates against classes of children according to the source of the father's income and not the need of the children

(i) The Standard of Review

It is well settled that equal protection[32] challenges

[32]Although the Fifth Amendment contains no equal protection clause, discrimination may be so arbitrary and unjustifiable as to violate the due process clause. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). The same test is applied in determining whether a federal statutory classification in the area of social welfare comports with due process as is applied in determining whether a state classification is consistent with the equal protection clause of the Fourteenth Amendment. *United States Dept. of Agriculture v. Moreno*, 93 S.Ct., 2821, 2825 n.5 (1973).

to welfare legislation are to be tested by the "traditional" standard of review. *Dandridge v. Williams*, 398 U.S. 471 (1970). Thus, where the goals sought by a legislative classification are legitimate and the classification adopted is rationally related to the accomplishment of those goals, the legislation will be upheld. *Richardson v. Belcher*, 404 U.S. 78, 81 (1971).

In *United States Dept. of Agr. v. Moreno*, 93 S.Ct. 2821 (1973), the Court applied the "traditional" standard to strike down a provision of the Food Stamp Act that totally excluded otherwise needy households from foodstamps due to the presence of an unrelated person under age sixty in the household. The case is important both for its methodology and its result.

First, the Court found that the exclusion was irrelevant to the Food Stamp Act's stated goals of alleviating malnutrition and stimulating the nation's agricultural economy. The Court then examined the meager legislative history to see whether it might reveal some other purpose that would support the exclusion. It held that an expressed intent to prevent hippie communes from receiving food stamps was an improper governmental purpose.

Lastly, the Court addressed the contention that the exclusion bore a rational relationship to the government's interest in preventing fraud. This justification was also rejected, principally because the Court believed that the practical result of the exclusion would be to penalize the very persons the Act was designed to assist. The Court also found it doubtful that Congress could rationally have intended the provision to protect against abuse when the Act contained provisions aimed specifically at those problems.

It has been suggested that the Court applied a stricter version of the "traditional" equal protection test in *Moreno* than was applied in such cases as *Jefferson v. Hackney*, 406 U.S. 535 (1972), *Richardson v. Belcher*, 404 U.S. 78 (1971) and *Dandridge v. Williams, supra*. Note, the Supreme Court, 1972 Term, 87 Harv.L.Rev. 55, 125-133 (1973). Assuming that this is true, it is justified by the fact that unlike the other cases cited, there was no question that the households excluded were equally needy. "[I]t is appropriate for the courts to be more deferential toward legislative decisions about the basic welfare problem of identifying the needy than toward legislative discriminations on the basis of efficiency between those of equal need." 87 Harv.L. Rev. at 132.

Plaintiffs maintain that, assuming the Court did apply a stricter standard of review in *Moreno*, precisely the same considerations are present in the instant case.

(ii) Consideration of the mandatory bar provision within the analytical framework of USDA v. Moreno

(A) Statutory purpose

The unemployment compensation program was originally conceived as providing a pool of funds from which workers could receive "partial replacement of lost earnings" during period of unemployment. Like OASDI, unemployment insurance is not an antipoverty program. Eligibility for assistance and the level of benefits are based on past earnings experience and not

on need. The poor often are excluded or receive inadequate benefits.[33]

Although unemployment insurance was established along with the other social insurance programs under the Social Security Act of 1935, it is unique. While it fulfills a "need" in the sense that any income during a period of unemployment is better than nothing, *California Department of Human Resources Development v. Java*, 402 U.S. 121(1971), it is not based on "need" as defined in the categorical assistance programs. While it might be possible to sustain life on fourteen dollars per week, it is bound to have adverse consequences for the physical and mental health of the children.

Contrariwise, the AFDC program was designed to provide subsistence to families on the basis of demonstrated need. It is true, as defendants claim, that as originally conceived, the AFDC program was not intended to protect all needy children. A Senate committee report stated that "many of the children included in relief families present no other problem than that of providing work for the breadwinner of the family." S.Rep. No. 628, 74th Cong. 1st Sess. 17 (1935) quoted in *King v. Smith*, 392 U.S. 309, 328 (1968). For twenty-five years, AFDC benefits were unavailable to intact families made needy due to unemployment of the parent. But this was all changed in 1961 when Congress amended the definition of

[33] S. Levitan, Programs in Aid of the Poor for the 1970s, 39-40 (1969). The amount of benefits are invariably set at one half the average weekly earnings. Haber & Murray, Unemployment Insurance in the American Economy, 173 (1966).

"dependent child" to include those in need due to parental unemployment.

When Congress enacted ANFC-UF legislation, its aim was to provide the children with subsistence, not to deal with the problem of unemployment. This is reflected in the Handbook of Public Assistance Administration, in which HEW emphasized that ANFC-UF was not a new federal program to deal with the problem of unemployment, but rather that it "simply extends the definition of "dependent child" under Title IV of the Social Security Act "to include a group not previously covered." Handbook of Public Assistance Administration, Part IV ¶3424.2 (1963). In the course of discussing the definition of unemployment which was to be left up to the individual states, HEW emphatically stated:

> "In addition, the extension is clearly *not* a separate 'unemployment relief measure' but is designed to reach children *not otherwise eligible* but needy because a parent is unemployed."
>
> HEW Handbook of Public Assistance Administration ¶3424.21 (1963).

Whatever justification may exist for the classification, it cannot be that children are less needy because their fathers secure some income during the period of unemployment. This is demonstrated by the fact that if the father receives a pittance from any source other than unemployment insurance, it is merely subtracted from the assistance grant. The eligibility of the father for unemployment compensation has no rational connection with the need of his children under the assistance program. *King v. Smith*, 392 U.S. 309, 336 (1968) (Douglas J. concurring.) The mandatory bar

provision is subversive of the statutory purpose of providing basic financial protection to needy dependent children, which this Court has recognized as "the paramount goal of AFDC." *King v. Smith*, 392 U.S. at 325.[34]

(B) Legislative history and other suggested justifications for the bar

One searches the legislative history in vain for any inkling of the reason for the exclusion. The defendants argue that Congress intended that "the number of families on AFDC is to be kept to a minimum." Like the anti-hippie bias in *Moreno*, a statutory provision designed solely to keep families off the welfare rolls is constitutionally impermissible. *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969); *Memorial Hospital v. Maricopa County*, 94 S.Ct. 1076, 1085 (1974).

In *Burr v. Smith*, 322 F.Supp. at 985, the court suggested that "the receipt of insurance benefits to which they have contributed may be better for the

[34]The subsidiary statutory purposes to strengthen the family unit in which the children are being raised and to help the caretaker achieve maximum self-support and personal independence "consistent with the maintenance of continuing parental care and protection, . . ." are also undercut. First, the exclusion encourages fathers to desert their families to make them eligible under 42 U.S.C. Section 606. Second, assuming it encourages personal independence and self support to force the father to accept inadequate unemployment benefits, this clearly cannot be achieved at the expense of "parental care and protection." 42 U.S.C. Section 601.

morale of unemployed workers than would be dependence upon or even eligibility to receive welfare assistance." But it is plainly irrational to boost the father's morale at the expense of the nutrition and wellbeing of his children. Nor can the exclusion constitute an incentive to work when the law already requires that the individual be registered to accept work at the time he applies for benefits.[35] The existence of such a provision casts considerable doubt on the proposition that Congress could rationally have intended to prevent this particular abuse. *United States Department of Agriculture v. Moreno*, 93 S.Ct. at 2827.

No other objective of the unemployment insurance program is advanced by excluding the family from ANFC. Those objectives have been described by the Department of Labor as follows:

> "Unemployment insurance is a program—established under Federal and State law—for income maintenance during period (sic) of involuntary unemployment due to lack of work, which provides partial compensation for wage loss as a matter of right, with dignity and dispatch, to eligible individuals. It helps to maintain purchasing power and to stabilize the economy. It helps to prevent the dispersal of the employers' trained work force, the sacrifice of skills, and the breakdown of labor standards during temporary unemployment."
>
> U. S. Dept. of Labor, Bur. of Emp. Sec., Major Objectives of Federal Policy with Respect to the

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[35] 42 U.S.C. Section 607(b)(2)(C)(i).

Federal-State Employment Security Program, Gen. Admin. Letter, No. 35, April 25, 1955.[36]

Whether or not unemployment compensation is supplemented with welfare assistance is irrelevant to the attainment of these objectives.

In the District Court, HEW advanced two rationalia for the disqualification. First, it suggested that Congress was motivated by an intent "no longer to mask states' deficiencies in implementing unemployment compensation programs." But, as the government itself has recognized, the purposes of the programs are different.[37] Having recognized the dependency of children whose fathers are unemployed, it is irrational to deprive some of them of subsistence to encourage growth of an insurance program never designed for that purpose.

HEW also argued that the disqualification provision may have been inserted so as not to stifle "the independent growth of the compensation programs through the previous practice of letting ANFC funds be

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[36]Quoted in Haber and Murray, Unemployment Insurance in the American Economy 26. The authors comment that the objective of stabilizing employment is "not mentioned much today" and the objective of stabilizing the economy through purchasing power has a "limited but important" effect. *Ibid.* p. 32-32.

[37]Even those states that provide for dependent's allowances as part of their unemployment compensation program do not do so on a "needs" basis. "The vital difference that still exists between unemployment insurance and relief is that no individual inquiry and determination is made as to whether the claimant actually needs the dependent's benefit in order to house, feed and clothe the dependent." Haber & Murray, Unemployment Insurance in the American Economy, 193.

used as a substitute." But ANFC funds never were used as a "substitute". Under former Section 607, states were permitted to supplement unemployment compensation with ANFC-UF if the former was lower than the state need standard.

Like *Moreno*, the statutory classification results in the total exclusion of one class of equally needy children. Like *Levy v. Louisiana*, 391 U.S. 68 (1968) the children are punished for something over which they have no control. See *King v. Smith, supra; Bradford v. Juras*, 331 F.Supp. 167 (D.Or. 1971); *Cooper v. Laupheimer*, 316 F.Supp. 264 (E.D.Pa. 1970). Like *United States Department of Agriculture v. Murry*, 93 S.Ct. 2832 (1973), the mandatory bar provision creates a conclusive presumption that children are less in need solely because their fathers are eligible for unemployment compensation, no matter how small the amount. And like *Anderson v. Burson*, 300 F.Supp. 401 (N.D. Ga. 1968), it discriminates against children solely on the basis of the source of their parent's income. There can be no justification for treating these children differently from other children whose unemployed fathers receive income from other sources such as Social Security, Workman's Compensation, veteran's benefits or contributions from friends. The mandatory bar provision should be struck down under the Due Process Clause of the Fifth Amendment.

No decision of this Court requires a contrary result. In *Richardson v. Belcher, supra*, the Court upheld a provision of the Social Security Act offsetting federal disability benefits against state workmen's compensation. Under the Act, total state and federal benefits are limited to 80% of the employee's average earnings prior

to the disability. Plaintiffs argued that workmen's compensation was subject to different treatment than other types of disability insurance.

Congress had made findings that in 35 out of 50 states, a typical worker injured and eligible for both federal disability and state compensation received benefits in excess of his take home pay. The offset provision was upheld by the Court on the ground that Congress could be legitimately concerned (1) that the worker's incentive to return to work could be destroyed where his benefits exceeded his take home pay; (2) that this situation impeded rehabilitative efforts of the state program; and (3) that duplication in benefits might lead to the erosion of the workmen's compensation program. However, the Court expressly noted that the new law allowed a supplement to workmen's compensation where the state payments were inadequate.

Three critical factors serve to distinguish the disqualification provision in the instant case from the workmen's compensation offset upheld in *Belcher*. First, offsetting benefits so that an individual does not earn more from his disability than on the job is understandable in terms of a work incentive. Totally excluding a family from ANFC is incomprehensible.[38]

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[38]The "incentive" to go back to work in this context would be deliberately to deprive the family of enough money to live on. This was hardly the type of incentive the Court was talking about in *Belcher* where the worker was actually encouraged *not* to go back to work because he would earn less money. Or in *Dandridge v. Williams*, 397 U.S. 471, (1970), where the Court noted that "By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment." *Id.* at 486.

Secondly, in stark contrast to the rich legislative history in *Belcher*, there is nothing to indicate the intent of the legislature in totally excluding plaintiffs' families from ANFC.

Thirdly, workmen's compensation and disability both serve a common purpose—to pay the worker and his dependents substitute earnings during the period of his disability. Unemployment compensation operates on the same principle. But ANFC is designed to provide benefits to the family based on need. Clearly *Belcher* would not rule out supplemental ANFC benefits to augment unemployment compensation to meet the subsistence standard set by Vermont. Nor could it be argued that such payments could lead to the erosion of the unemployment compensation program.

Dandridge v. Williams, supra, and *Jefferson v. Hackney, supra*, are similarly inapposite. *Dandridge* dealt with relative economic hardships within the ANFC program. The lack of available money forced the state to choose between limiting the "per child" payments for all families, or setting a maximum benefits ceiling for large families. The state chose the latter recognizing the ability of large families to achieve "economies of scale". The mandatory bar provision totally excludes the family from ANFC regardless of size or the amount of the unemployment benefit. The government has never claimed that the exclusion is required to preserve the trust fund or to avoid a reduction in the number of persons benefitted by the Act. *Jimenez v. Weinberger*, 94 S.Ct. 2496, 2500 (1974).

Jefferson v. Hackney recognized the right of the state to make the same kinds or judgments between different categories of public assistance. Thus the court upheld a

system of percentage reductions that favored the aged and infirm over recipients of AFDC. But this was the result of a firm policy decision, rationally based, that the former groups would be least able to cope with the hardships of an inadequate standard of living. No such judgment can be made between children because of their father's eligibillty for a certain kind of income.

Lastly, in *Macias v. Finch, supra*, the plaintiffs challenged the federal definition of "unemployment" under which eligibility for ANFC-UF is determined by the number of hours worked rather than the amount of income earned. Plaintiffs claimed that a standard of unemployment which disregarded need was irrational.

The Court held that Congress could legitimately distinguish between the unemployed and underemployed and apply different solutions to the problems of each. The Court found a rational basis for the legislation in congressional efforts to maintain adequate wages for employed people through minimum wage laws and collective bargaining rights.

Marcias is obviously of no application here.

Should the Court find that 607(b)(2)(C)(ii) violates the due process clause of the Fifth Amendment, it should strive to give relief from an invidious imposition of inequalities:

> "Where a statute is defective because of under inclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggreived by exclusion. Cf. Skinner v. Oklahoma, 316 U.S. 535 (1942); Iowa-Des Moines National Bank v. Bennett, 284 U.S. 239 (1931)." *Welsh v. United States*, 398 U.S. 333, 361 (1970) (Mr. Justice Harlan concurring in the result).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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APPENDIX "A"

CHARACTERISTICS OF THE UNEMPLOYED PARENT SEGMENT OF STATE PROGRAMS FOR AID TO FAMILIES WITH DEPENDENT CHILDREN APPROVED AND IN OPERATION DEC. 1, 1966 (SUMMARY)

AID TO FAMILIES WITH DEPENDENT CHILDREN
SPECIAL CHARACTERISTICS RELATING TO UNEMPLOYMENT OF A PARENT

(The general requirements in a State apply also to families in need as a result of the unemployment of a parent. See Characteristics of State Public Assistance Plans: General Provisions - IA Report No. The following table covers only the States' definition of unemployment as of June 30, 1966, which has been sent to the States for their validation of this definition.)

State (21)	Definition of unemployment
Arizona	Applies to the supporting parent (natural or legally adoptive). Unemployed parent--(a) Has had full-time employment for 5 of last 7 years immediately preceding date of application for assistance, i.e., averaging more than 20 hours per week for 40 weeks per year and is now not eligible for unemployment compensation; or (b) has completed training under Vocational Rehabilitation sponsorship, Manpower Development and Training Act of 1962, a project carried on under Title V of the Economic Opportunity Act of 1964; or has completed training in a recognized school; is seeking employment for the first time since completing the training; and is either ineligible to receive unemployment compensation or has exhausted unemployment compensation 30 days prior to date of application. In either case must have been registered with the State Employment Service for a minimum period of 30 days immediately preceding the date of application for assistance. Ineligible if dismissed for cause from most recent prior employment. Period of ineligibility is limited to 1 year from date of dismissal.
California	Applies to either parent (natural or adoptive); not working at all or employed only part time, i.e., has worked less than 173 hours of paid regular work per month, or less than the number of hours considered full time by the industry for the job (as established by the California State Employment Service [see below for provisions re: Part-time Farm Labor]); is available for and seeking employment, or receiving training essential to future self-support, or is working full time but is incapacitated to degree that he is able to accomplish less on a job than a normal person and is paid on reduced basis.

Employment at farm labor affording irregular, temporary or intermittent work which provides no assurance of a dependable amount of income shall be presumed to be part-time employment. The presumption that farm work is part-time employment is overcome if: (a) the parent has worked for not less than 173 hours in each of the immediately preceding 3 months, and (b) the employment is expected to continue at or above this level of hours indefinitely beyond the next month.

If father employed full time, deprivation due to unemployment of mother is considered only if she was previously in labor market and/or has (a) a valid, workable plan for employment or training, (b) satisfactory child care plan, and (c) ability to work and care for family.

State	Definition of unemployment
California (Continued)	No provision relating to receipt of unemployment compensation. Unemployment ends when all of the following conditions are met: (a) the employment is expected to continue; (b) the unemployed parent has worked at least 1 full week, and (c) at least 1 full week's pay has been received before the end of the month. Three months' readjustment period allowable in AFDC upon return of absent or incapacitated parent but does not apply when deprivation due to unemployment of a parent ends.
Colorado	Applies to father or mother or both (natural or adoptive). Must have been unemployed for a period of 30 calendar days from his previously held full-time employment (173 hours per month unless the industry in which employed requires less than 40 hours per week); or has only part-time employment (less than 40 hours per week; eligible if part-time work of both parents combined is less than 40 hours per week); or is new to the labor market and is seeking employment. Parents are expected to seek employment actively from all sources in the community, including reasonably frequent contacts with Colorado State Employment Service, private employers who employ large numbers of people, and all other possible job openings. Ineligible if employment of parents (combined or individually) is 40 hours per week even if the income received is less than that specified to constitute need. Eligibility for or receipt of Unemployment Compensation does not affect eligibility except as amount of benefit received constitutes available income in determining need.

State	Definition of unemployment
Connecticut	Either one or both parents (natural or adoptive), stepparent when natural or adoptive parent is in the home, actively engaged in labor market within 2 years prior to application, now available for employment, employable, and in search of work; on strike and without full-time employment; totally unemployed on date of application or date assistance authorized or partially unemployed (less than 5 days a week and/or 35 hours a week or less than number of hours considered full time by industry for job performed). Unemployable when health conditions, personality limitations or infirmities of age would preclude activities involved in competitive employment. If one parent is not available for employment as defined by State (including "regular full-time school attendance other than planned vocational education under this program"), family may be eligible on basis of unemployment of the other parent. Must apply for unemployment compensation. Under Connecticut Unemployment Compensation Law strikers are not eligible for benefits.
Delaware	Either parent (natural or adoptive) who are: (a) in the labor market but not currently employed; (b) not in the labor market previously but available and seeking employment; (c) employed part time (working less than 40 hours a week unless the number of hours employed is considered full-time employment by the industry for the job he is in) and are seeking additional or full-time employment. People who are not working because of a labor-management dispute and are actively seeking employment and are registered with the employment service are considered unemployed. Unemployment can apply to 1 parent in a family when the other parent is employed. Unemployed parent is one who: (a) has not worked for at least 1 week at the time of consideration, was and is able to work and available for work, is looking for work and is currently registered at the State Employment Service, or (b) is employed part time and is able and available to take full-time employment and is seeking additional work.
Hawaii	Either or both parents (natural or adoptive); must be able-bodied, not working or employed only part time (less than 173 hours a month), and available for full-time employment; applications for assistance from strikers or families of strikers accepted on same basis as other applications.

	Unemployed workers shall file claims for unemployment insurance with Unemployment Compensation, Bureau Employment Security; amounts received considered as income in determining need. Eligibility for unemployment compensation does not affect eligibility for AFDC-UP; amounts received are considered as income in determining need.
Illinois	Either parent (natural or adoptive): employable, unemployed or employed only part time, i.e., (1) neither self-employed nor working for an employer and is actively seeking work or is undergoing vocational education or re-training to enable him to obtain gainful employment, or (2) is employed less than 40 hours per week or less than the number of hours considered full time by the industry for the particular job. May include seasonally or self-employed parent, however, depending on his past practice or employment pattern. Includes a parent whose lack of employment is due to a bona fide strike at his place of employment. Unemployment means "absence of employment, or partial employment where earnings are insufficient to meet the needs of the family." Can apply to one parent in a family when the other is employed full time if income and available resources do not meet family needs. No requirement concerning receipt of unemployment compensation, any amount received from this source would be considered as income in determining need.

State	Definition of unemployment
Kansas	Either or both parents (natural or adoptive); has been employed but currently unemployed; not previously employed but currently seeking work; has only part time and is seeking full-time work; has been self-employed but currently has no work; one parent unemployed and other employed part time and either or both are seeking full-time work. Includes a parent receiving training under Manpower Training Act if otherwise eligible. No requirement regarding receipt of unemployment compensation, any amount received from this source considered as income in determining need. Ineligible if either or both parents are (1) fully employed (at least 40 hours a week or number of hours considered full time by industry for job performed) or (2) unemployed because of work stoppage caused by labor dispute at his place of employment or of last employment.

State	Definition of unemployment
Maryland	Father only (natural or adoptive); has no work at all or is employed only part time, i.e., less than number of hours which is customary for the particular job and for like jobs in the area; is actively seeking work; has current certification by Maryland State Employment Service that it is not possible to place him in a job; or is attending training sessions in order to acquire new skills which are in demand in labor market. Unemployed parent is one who is "able-bodied but without full-time gainful employment." May include a situation where father is unemployed and mother is employed. Ineligible if receiving unemployment insurance benefits except when the individual receiving it is enrolled in an educational and for training program to learn a new skill needed to have opportunity for employment, acquire a new skill which is in demand in the labor market, or improve an existing skill.
Massachusetts	Either or both parents (natural or adoptive); unemployed or employed only part time. An individual is deemed to be unemployed in any week in which he performed no wage-earning services, or works less than the normal weekly hours for his regular occupation and therefore has insufficient earnings to support his family. Not eligible for unemployment benefits because they (1) have exhausted such benefits, (2) have not sufficient coverage, or (3) have not worked in covered employment. Ineligible if parent (a) is receiving unemployment benefits or (b) is unemployed because he was discharged from job for "good cause" or left employment without "good cause."
Michigan	Applies to the parent (natural or adoptive) of at least one of the children in a "family unit"; not applicable to mother or person acting in place of mother if youngest child in eligible group is less than 2 years of age. Not engaged in gainful employment (as defined by State) for more than 32 hours in any one week; employable, i.e., physically and mentally able to take employment; actively seeking work and available for job interviews, referrals, and training opportunities.
Nebraska	
New York	

Ineligible if, without good cause, the parent left last full-time employment voluntarily or was discharged for misconduct connected with work within 90 days immediately preceding date of application. Agency assumes that parent left work voluntarily if termination of employment was due to a labor dispute in his place "of employment" whereas labor disputes involving a "supplier" of his place of employment does not affect the parents eligibility status.

Unemployment compensation - Must register for Unemployment Compensation, where applicable, with the Michigan Employment Security Commission and report weekly either to draw benefits or protect claim status.

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Parent (natural or adoptive) normally the major source of support for the family, with work history showing recent, regular full-time employment; actively seeking employment, has not refused suitable employment or training, has not become unemployed without good cause; currently totally unemployed or working less hours per week than number considered full time in the firm or place of employment; has been self-employed but no such work available or available only in limited quantities; participating in training or re-training program, receiving unemployment insurance which does not meet need in accordance with standards of assistance. Ineligible when unemployment results from stoppage of work due to a labor dispute at place of applicant's employment.

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Either or both parents (natural or adoptive) formerly employed full time; totally unemployed on date of application or employed less than 5 days per week or less than 35 hours per week; employable; available for employment, and actively seeking full-time employment; must explore through all employment resources in the community the availability of employment.

Must apply for unemployment insurance benefits. If presumptively eligible for or still in receipt of unemployment insurance benefits, parent must report to State Employment Service as required.

State	Definition of unemployment
Ohio	Either parent (natural or adoptive) physically and mentally able to work in gainful employment; unemployed or employed only part time, i.e., less than the number of hours considered full time by the industry in which parent is employed, and actively seeking employment. Any incipient family with one parent fully employed if family is in need and the other parent meets requirements. A parent who is seasonally employed is expected to show valid reason why past practices relating to off or slack periods are not adequate or available. Unemployment compensation - receipt of benefits does not affect eligibility for aid if financial need exists; amount of benefits is considered in determining amount of assistance payment.
Oklahoma	Either parent (natural or adoptive) who is head of the family and principal source of support; either (a) completely without employment, or (b) earning less than $56.25 monthly and working less than full time; earned at least $ 75 in one of past 2 years immediately preceding application or, if entering labor market for the first time during the past 12 months, is principal source of support for the family. Must be available for full-time employment or training. Must be physically and mentally able to work, ready and willing to engage in work which the applicant is qualified to do and physically able to perform. Ineligible if parent left his last work voluntarily without good cause connected with his work or was discharged for misconduct connected with his work, or left his work as a participant in a strike against the employer. Unemployment Compensation: Must have exhausted or be ineligible for unemployment insurance. The social worker in the Division of Family Services will make the determination of eligibility from the standpoint of unemployment and notify the county department of the decision. Title V--EOA: In counties having work training and experience projects under Title V of Economic Opportunity Act in operation, more liberal eligibility requirements apply: waive requirement that unemployed parent be "head of the family"; waive requirements on current monthly earnings and amount earned in preceding 2 years; waive requirements that person en-

State	Definition of Unemployment
	tering labor market be "principal source of support for the family"; and permit person to be available for part-time employment as well as training. Also permits receipt of unemployment compensation if such benefits do not meet his total need. Factor of unemployment eligibility may be determined locally without prior referral to State office.
Oregon	Either parent (natural or adoptive) able to work and seeking work whether or not he has ever been employed; able to work but receiving training considered essential to future support of his dependents; unemployed, i.e., less than 1/2 hours per month (40 hours in any week) unless the normal work week for the industry for which he is employed is less than 40 hours per week. Unemployment does not exist if 1) the parent has employment for the same number of hours as other persons working in same kind of work, or 2) the parent chooses to work less than 40 hours per week when he can work 40 hours. Eligibility continues if an unemployed parent becomes incapacitated but is expected (according to medical evidence) to be able to work within 3 months. Receipt of unemployment compensation does not affect eligibility if there is financial need, according to State Standards of assistance.
Pennsylvania	Either parent (natural or adoptive); must be employable, unemployed or is working only part time, i.e., less than 40 hours per week or work at less than the standard number of hours per week for the type of employment. May include family with one parent fully employed if the other is an employable person who is not employed or is employed only part time. Employability determined on individual basis, considering capacity, suitability or acceptability in the existing labor market. Unemployment compensation: Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.
Rhode Island	Either parent (natural or adoptive); unemployed or working part time (less than 40 hours a week or the number of hours considered full time by the industry for the job); has a potential for full-time employment; is actively seeking work, and is available for education or job training or both. Ineligible if the one parent available for work is employed full time even though earnings are less than needed to support family. Includes persons who have been self-employed.

	Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.
Utah	Both parents; formerly in labor market but not currently employed, not previously in labor market but seeking work, or currently employed only part time (less than 30 hours per week). If both parents employed part time, combined hours of work must be less than 30 hours per week. Unemployment means primary wage earner has lost his employment in any employment activity in which he has customarily been engaged on a full-time basis (30 or more hours per week). Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.
State	Definition of unemployment
Washington	Either or both parents (natural or adoptive), employable but not working full time for an employer, i.e., less than the same number of hours as another person working in same work classification or less than 30 hours per week; absent from work because of industrial disputes, weather, or lay-off; financial need must be expected to last for more than 2 weeks from date of application. May apply to one-parent family if absent parent is unemployed and only temporarily absent while looking for work, intending to return. Unemployment compensation: Must apply for unemployment compensation including written verification of current unemployment compensation status.
West Virginia	Either parent; employable but unemployed. Unemployed parent is one who (1) has never been employed or self-employed, (2) has not been employed full time or self-employed during effective month of approval, (3) is not working full time, i.e., 100 hours a month, or the number of hours considered to be full time by the industry for the particular job, (4) is actively seeking work, and (5) has not refused a bona fide offer of employment or voluntarily quit a full-time job or self-employment within the past 3 months. (Self-employed person may be considered unemployed if he has disposed of business equipment, retaining simple tools of a trade that would enable him to secure full or part-time employment in future.)

Ineligible if discharged for good cause from last job unless the cause was physical or mental inability to do the job.

Verification from last employer or potential employer is required to determine employment status.

All provisions can apply to either parent, but employability of the mother not considered an eligibility factor if her employment would prevent the father from going to work or actively seeking work.

Unemployment compensation: Is not receiving or is not eligible to receive unemployment compensation. Must apply for unemployment compensation benefits if eligible for them. Not applicable to parents who (1) were self-employed, (2) have worked primarily in agriculture, (3) are domestics, or (4) were employed by State and local governmental units since they are not eligible for such benefits.

APPENDIX "B"

MEMORANDUM CONCERNING AVERAGE MONTHLY PAYMENTS UNDER AFDC-UF AND UNEMPLOYMENT INSURANCE

MEMORANDUM CONCERNING AVERAGE MONTHLY PAYMENTS UNDER AFDC-UF AND UNEMPLOYMENT INSURANCE

Since 1972, the Unemployment Insurance Program has changed in a number of states, effectively raising the maximum and average payments to levels that now exceed average AFDC-UF benefits, in 14 of the 25 states which have both programs (see Table 1). These 14 states represent 57.6 percent of the total number of AFDC-UF families, while the other 11 represent 42.4 percent. (In FY 1972, these percentages were 19 and 81 percent, respectively.)

During this period, the gap between maximum and average UI payments has decreased in most states and the percentage of claimants eligible for the maximum has increased (see Appendix A).

Additionally, since 1972, in several states a larger number of higher income workers are unemployed than previously. All of these factors have contributed to higher average payments and to relatively more payments at the higher end of the UI payment scale. Likewise, the use of UI average payments to discuss payments to a low income population (such as AFDC-UF recipients) raises a serious question of validity. Particularly, average and maximum UI payment levels are probably not valid bases for the statement in the Departmental brief concerning men qualified for benefits under both UI and AFDC: "*. . . it appears that males in this category can expect to receive at least as much, if not more, from unemployment compensation than from the AFDC-UF program.*"

TABLE 1

COMPARISON OF AVERAGE MONTHLY PAYMENTS UNDER UNEMPLOYMENT INSURANCE AND UNDER AID TO FAMILIES WITH DEPENDENT CHILDREN–UNEMPLOYED FATHER SEGMENT, FISCAL YEAR 1974[a]

	Monthly Family Payments AFDC-UF[b]	Monthly Payments Unemployment Insurance[c]	Amount AFDC-UF Payment Exceeds UI Payment (Col. 1 minus Col. 2)
California	262.03	266.04	- 4.01
Colorado	266.39	307.52	- 41.13
Delaware	158.47	293.66	- 135.19
D.C.	190.05	350.12	- 160.07
Hawaii	355.78	306.04	+ 49.74
Illinois	321.16	278.76	+ 42.40
Iowa	327.17[d]	272.57	+ 54.60
Kansas	249.24	260.19	- 10.95
Maryland	212.33	266.51	- 54.18
Massachusetts	335.96	290.02	+ 45.94
Michigan	348.24	269.37	+ 78.87
Minnesota	331.87	279.28	+ 52.59
Missouri	148.15[e]	238.24	- 90.09
Nebraska	229.90	245.68	- 15.78
New York	372.62	266.55	+106.07
Ohio	212.29	295.91	- 83.62
Oklahoma	231.22	196.45	+ 34.77
Oregon	267.12	238.11	+ 29.01
Pennsylvania	269.92	307.43	- 37.51
Rhode Island	279.82	275.69	+ 4.13
Utah	264.44	264.78	- .34
Vermont	317.84	266.42	+ 51.42
Washington	283.52	274.91	+ 8.61
West Virginia	217.94	199.53	+ 18.41
Wisconsin	364.15	297.99	+ 66.16
Weighted average[f]	285.70	274.59	-

[a]Only those states with both programs are included.

[b]Compiled from monthly *Public Assistance Statistics*, Report Series A-2, USDHEW, National Center for Social Statistics.

[c]Unpublished data supplied by State Employment Security Agencies to U.S. Department of Labor, Manpower Administration.

[d]Data represent six months, January–June, 1974.

[e]Data represent nine months, October 1973–June 1974.

[f]U.S. Average represents the twenty-five states shown.

Average payments reflect benefits paid to a substantial number of unemployed persons who are not eligible for AFDC-UF by virtue of their family wealth, many of whom receive the maximum allowable UI benefits, creating an inflated average for the population of concern here. The inclusion of these beneficiaries in the computation of an indicator for payment levels to beneficiaries also eligible for AFDC-UF is invalid.

Who, then, are these fathers that are dually eligible? A person eligible for both UI and AFDC-UF is a family head, with two or more dependents, who prior to applying for AFDC-UF worked in insured employment. At the time he lost his job his income had been high enough to meet the minimum requirements under UI (at least $600 during the previous year in Vermont), yet his assets and other resources are meager enough to meet the AFDC-UF resource limitations. For example, in Vermont, a family can own its own home[1] (though less than ten percent of AFDC recipients do), have up to $1,800 in other real and personal property, liquid reserves, cash or savings, a life insurance policy with a face value not greater than $1,100, an automobile, and $1,500 worth of tools, equipment, and livestock. (Other states have similar limitations. See Appendix B for a state by state listing.) This is not a well-off family.

In their 1973 nationwide study of AFDC families, the U.S. Department of Health, Education and Welfare

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[1]At low income levels, home equity is so small that for only seven percent of poor persons would family income rise above the poverty line if this resource were liquidated over five years. Federal Reserve Board, *Survey of Financial Characteristics of Consumers*, August 1966, p. 39.

found that 60.1 percent of unemployed male family heads[1] worked in blue collar jobs. Nearly 48 percent were in the lowest-paying occupations—as laborers or clerical or private household workers.[2] Over 44 percent had not completed the eighth grade and two-thirds had not finished high school.[3] (See Appendix C for state by state numbers on each of these characteristics.)

Although nearly half of the employed fathers worked full time, their earnings were strikingly low: nearly three-quarters earned incomes below the poverty line for a family of four ($4,300 in 1973). Monthly and equivalent annual incomes are shown in Table 2 below.

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[1]About 80 percent of these men were AFDC-UF recipients.

[2]USDHEW, National Center for Social Statistics, *Findings of the 1973 Study Part I Demographic and Program Characteristics*, 1974, pp. 78 and 79.

[3]*Ibid*, p. 72. About 45.8 percent are black, 13.4 percent of Spanish origin or descent, 1.1 percent American Indian, and 38.0 percent other/white. Ibid., p. 25.

TABLE 2

MONTHLY EARNED INCOME OF AFDC FATHERS, JANUARY 1973[a]

Monthly income	Percent of fathers	
$1-24	7.0	
25-49	6.9	
50-74	6.1	
75-99	7.2	
100-149	15.2	
150-199	7.8	
200-249	5.8	
250-299	5.6	
300-399	10.9	← U.S. poverty line-
400-499	12.7	family of 4 ($4,550)
500 and over	14.7	
	100.0	

Source: USDHEW, National Center for Social Statistics, *Findings of the 1973 AFDC Study Part II–Financial Circumstances*, p. 58.

[a]About 80 percent of these fathers are AFDC-UF recipients.

All of these characteristics indicate that AFDC fathers are at the low end of the distribution of male workers, in terms of education, jobs, and earnings. Any comparison of their UI benefits with benefits of workers for AFDC at the least must only include UI beneficiaries in comparable income groups.

In the same study, DHEW asked respondents whether they had received benefits under Unemployment Insurance during the survey period and, if so, how much. (Unemployed fathers who had transferred from one program to the other would answer positively; no state permits receipt of both program benefits simultaneously.) These unemployed fathers, all of whom were currently recipients of AFDC-UF, reported median monthly UI payments of $150.00,[1] about 57.7 percent of the average Unemployment Insurance payments nationwide of $256.12 that month (see Table 3). At the same time, the median AFDC-UF payment was $272.87,[2] $125 above the UI payment. The distribution of payments under both programs is shown in Table 3 and in Chart 1.

This disparity was not unique to 1973. In their earlier biennial surveys in 1967, 1969, and 1971, DHEW found that AFDC recipients who had recently received UI payments received UI amounts equal to 64.2 percent, 71.7 percent, and 73.5 percent of the AFDC payments they later received (see Table 4). UI payments are *declining* relative to AFDC-UF payments for this population.

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[1]USDHEW, National Center for Social Statistics, unpublished information from the 1973 Survey. The average (which is not available yet) would be slightly higher than the median.

[2]*Op cit.*, 1973 Survey, unpublished data.

TABLE 3

AFDC-UF AND UNEMPLOYMENT INSURANCE PAYMENTS TO AFDC-UF BENEFICIARIES, JANUARY 1974, NATIONWIDE

Monthly Payments	Percentage of Families	
	AFDC-UH	Unemployment Insurance
$1-49	.8	0
50-74	.7	28.6
75-99	1.3	14.3
100-149	2.6	7.1
150-199	12.3	0
200-249	22.6	21.4
250-299	19.3	0
300-399	29.6	28.6
400-499	8.8	0
500 and over	2.0	
	100.0 (N=119,795)	100.0 (N=11,812)

Source: USDHEW, National Center for Social Statistics, unpublished findings from the 1973 AFDC Study.

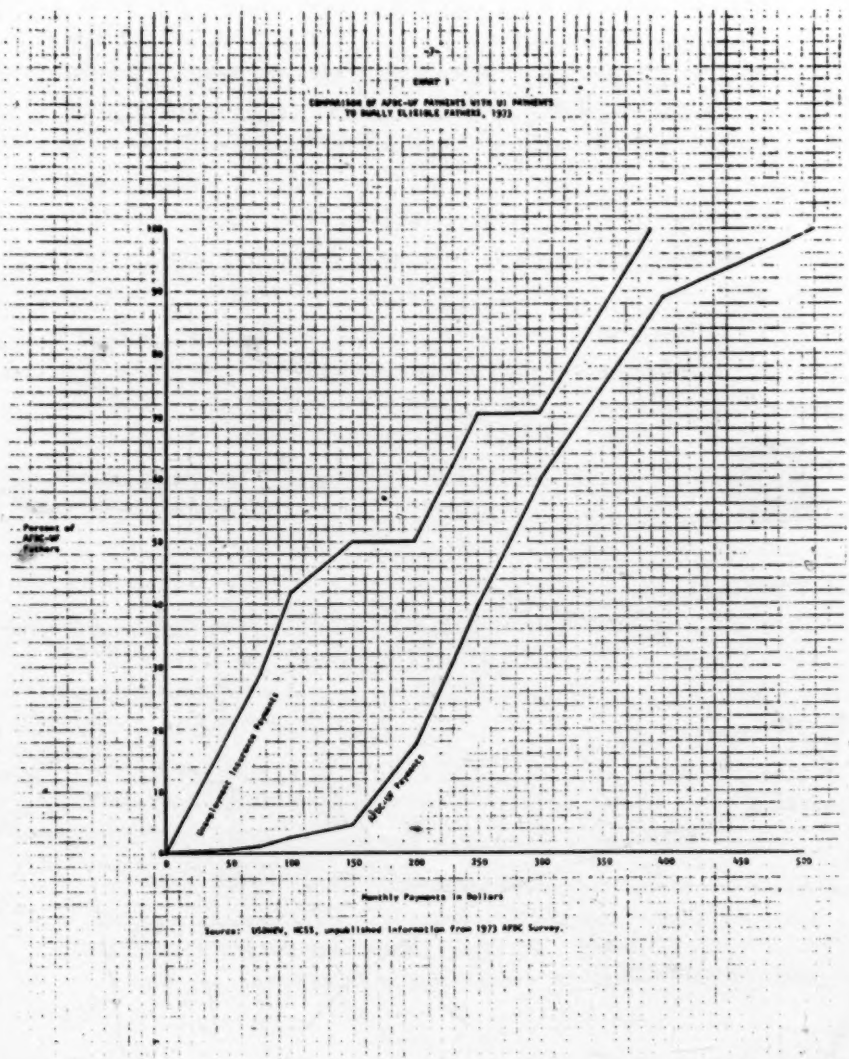
CHART 1
COMPARISON OF AFDC-UP PAYMENTS WITH UI PAYMENTS TO DUALLY ELIGIBLE FATHERS, 1973
Percent of AFDC-UP Fathers
Unemployment Insurance Payments
AFDC-UP Payments
0
50
100
150
200
250
300
350
400
450
500
Monthly Payments in Dollars
Source: USDHEW, NCSS, unpublished information from 1973 AFDC Survey.

TABLE 4

COMPARISON OF UI PAYMENTS TO AFDC-UF RECIPIENTS WITH UI PAYMENTS TO ALL RECIPIENTS AND AFDC-UF PAYMENTS JANUARY 1973

Month and Year	Unemployment Insurance Payments to Subsequent AFDC-UF Recipients			UI Payments Nationwide (to all Recipients)	AFDC-UF Payments
	Payments	Percentage of Average AFDC-UF Payments	Percentage of Average UI Payments		
nuary 1967	$133.80[a]	64.2	74.05	180.69[b]	208.55[c]
nuary 1969	171.53[d]	71.7	85.8	199.87[e]	239.10[f]
nuary 1971	178.66[g]	73.5	76.3	234.07[h]	243.00[i]
nuary 1973	147.83[k]	54.2	57.7	256.12[k]	272.87[l]

[a]USDHEW, National Center for Social Statistics, *Findings of the 1967 AFDC Study: ta By State and Census Division, Pt. II, Financial Circumstances*, Report AFDC-4 (67), gust, 1970, Table 99.

[b]Telephone interview, USDOL, Manpower Administration official, December 20, 1974. aken from *Unemployment Insurance Statistics*, Manpower Administration.)

[c]USDHEW, National Center for Social Statistics, *Unemployed Parent Segment of AFDC, nuary 1967*, 1967.

[d]USDHEW, NCSS, *Selected Statistics Data on Families Aided and Program Operations*, port NCSS-4 (71), June 1971, Table 61.

[e]See footnote[b].

[f]*Op cit., Public Assistance Statistics*, January 1969, Table 8.

[g]USDHEW, NCSS, *Findings of the 1971 AFDC Study Part II, Financial Circumstances*, 71, Table 56.

[h]See footnote[b].

[i]*Op cit., Public Assistance Statistics*, January 1971, Table 8.

[j]Represents the median, probably lower than the average. Unpublished information from 1973 AFDC Study, USDHEW, NCSS.

[k]See footnote[b].

[l]*Op cit., Public Assistance Statistics*, January 1971, Table 8. (This figure is nearly identical the finding of the January 1973 AFDC Survey.)

Their UI payments in these earlier years were also considerably below the national average UI payments at the time. In the three years, their UI payments were 74.05 percent, 85.8 percent, and 76.3 percent of national averages (see Table 4).

There is little reason to believe that the distribution of payments has altered much since January 1973. In the interim, average AFDC-UF and average UI payments have increased nationwide about $29 and $26 per month, respectively. Under UI, the percentage of average wages paid in benefits has increased slightly, and in most states the percentage of claimants eligible for the maximum has increased (see Appendix A). But these factors have little effect on recipients at the lower wage levels. AFDC-UF income and resource limitations have not changed in most states since 1973,[1] effectively limiting eligibility to an even lower-income segment of the population, as incomes rise in general. Consequently, AFDC-UF eligible families may now receive UI benefits even further below the rising UI average than in 1973.

Respectfully submitted,

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[1] Telephone interview USDHEW, Assistance Payments Administration official, December 19, 1974.

Appendix A

PERCENTAGE OF UNEMPLOYMENT INSURANCE CLAIMANTS ENTITLED TO MAXIMUM WEEKLY BENEFITS

(In Percentages)

State	January-March 1972	January-March 1974
Michigan	72.2	80.6
Ohio	71.5	57.0
Iowa	70.2	67.6
Nebraska	64.9	60.7
Missouri	59.1	55.2
Washington	58.7	37.8
Kansas	58.1	52.5
Minnesota	57.4	58.5
Delaware	54.2	46.1
Oregon	51.3	50.8
Vermont	48.0	46.9
Massachusetts	47.4	41.0
Illinois	45.9	65.8
New York	43.9	50.4
Wisconsin	42.6	20.0
Maryland	41.1	45.5
Hawaii	37.5	27.2
Oklahoma	35.8	41.3
Utah	34.9	37.1
California	34.5	28.1
Rhode Island	-[b]	32.4
Pennsylvania	32.8	30.0
District of Columbia	26.8	32.1
Colorado	20.5	56.4
West Virginia	19.6	10.1

[a]U.S. Department of Labor, Manpower Administration, Unemployment Insurance Statistics, January-March 1972 and January-March 1974

[b]Data not available.

Appendix B

Property and Income Limitations under AFDC

Source: USDHEW, NCSS *Characteristics of State Public Assistance Plans under the Social Security Act.* Public Assistance Report No. 50 1973.

Item: 7. Property and Income Limitations
Program: AFDC
No. of Programs: 54

COMPILATIONS BASED ON CHARACTERISTICS OF STATE PUBLIC ASSISTANCE PLANS: GENERAL PROVISIONS IN EFFECT JANUARY 31, 1973

Property and Income Limitations in Determining Eligibility

Federal requirement: One of the conditions for approval of State Public Assistance Plans and for Federal financial participation in Aid to Families with Dependent Children is that the State Plan must provide for consideration, in determination of the need of a claimant of assistance, of any income and resources that he may have. The provisions tabulated below do not include the permissible or the required disregarding of certain earned or other income.

I. Provisions on Ownership of Property Used as Home 1/

Makes no separate evaluation of home; includes it in total of both real and personal property.....1 State

Missouri

Evaluates home with all real property, usually against a maximum applied only to real property.....4 States

California	Minnesota	New York	Tennessee

Evaluates home separately against a maximum applied only to the home property.....11 States

Alabama	Connecticut	Kansas	Oklahoma
Arizona	Guam	Mississippi	Wyoming
Arkansas	Hawaii	Montana	

Considers home separately but specifies no maximum for home property.....38 States

Alaska	Kentucky	New Mexico	South Dakota
Colorado	Louisiana	North Carolina	Texas
Delaware	Maine	North Dakota	Utah
D. C. x	Maryland	Ohio	Vermont
Florida	Massachusetts	Oregon	Virgin Islands
Georgia	Michigan x	Pennsylvania	Virginia
Idaho	Nebraska	Puerto Rico	Washington
Illinois	Nevada	Rhode Island	West Virginia
Indiana	New Hampshire	South Carolina	Wisconsin
Iowa x	New Jersey		

1/ For figures assigned to value of home or other specified limitations on the home see page 2a, AFDC Chart, of this same item.
x. Other special provision; refer to published document.

Item: 7. Property and Income Limitations
Program: AFDC, page 2a
No. of Programs: 54

STATE LIMITATIONS ON REAL PROPERTY AND PERSONAL PROPERTY WHICH AFFECT ELIGIBILITY FOR AID TO FAMILIES WITH DEPENDENT CHILDREN, JAN. 31, 1973

STATE	Home Assessed Value E-Equity M-Market Value O-Must be occupied as [illegible]	Other Real and Personal Property (Combined)	Other Real Property (Non-Home)	Personal Property--Negotiable Assets, Stocks, Bonds, and Other Liquid Reserves	Cash or Savings	Insurance and Burial: Life Insurance C-Cash Value F-Face Value	Insurance and Burial: Burial Insurance or Prepaid Contract	Value Excluded From Consideration as Assets--: Household & Personal Effects	Value Excluded From Consideration as Assets--: Car or Cars for Transportation	Value Excluded From Consideration as Assets--: Tools, Equipment, Livestock
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Ala.	$ 2500 E	$1000						Exempt		
Alaska	0 - No Maximum	$[illegible] 1/			$ 500	1/ C				
Ariz.	$ [illegible] F	$ 600 - one $1200 - family		$ 400 - one $ 600 - family 2/	2/			Exempt		Livestock $ 250-Tools
Ark.	$ 5500 to $ 7500 [illegible] 3/	$ 750 - one $1500 - family				$1000 F			$ 300 - Car	Livestock
Calif.	0 - $ 5000 E All real property	$1500 - family 4/		$ 600 - family x 4/		$1000 4/ C	4/	Exempt x	$1500 Car 5/	
Colo.	0 - No Maximum	[illegible] ch. $[illegible] - family								
Conn.	0 - $15,000 E		6/	$ 250 1/		1/ C		Exempt	Car	Income-producing
Del.	0 - No Maximum		6/	Not to exceed one month's needs		$1500 Per Person C	or $1500	Exempt	Car	Exempt
D.C.	No Maximum		7/		$ 300 - one 8/ $ 500 - family		8/	Exempt	$1500 - Car 9/	Exempt
Fla.	0 - No Maximum 10/ x	$1500 - family x 11/				$1000 - Per Person x F		Exempt		Livestock
Ga.	0 - No Maximum M	$[illegible] - family M 12/				$1000 F		Exempt	Car - 4 yrs old 2/	Income-Producing
Guam	0 - $12,000 M		13/	$[illegible] 1/		1/ C		Exempt	Car	
Hawaii	0 - $25,000 14/		$ 2[illegible] 14/	No Maximum 15/		15/ C				
Idaho	0 - No Maximum	$2600 16/	16/	$ 500 16/		16/ C				
Ill.	0 - No Maximum	$ 350 - one [illegible]-each add'l [illegible]			17/	$1000 - Per Person F	Cemetery lot	Exempt	Vehicles	Income-producing
Ind.	0 - No Maximum		6/	$ 700 - family 1/ $ 350-chn.only x		1/ C		Exempt	Cars	Exempt
Iowa	0 - No Maximum	$ 350 - one [illegible] each add'l.			17/	$1000 - Per Recipient x F		Exempt	$2500- Cars	
Kan.	0 - Moderate Value - [illegible] ([illegible] acres) E	$ 500 - one $1000 - family				$ 500 - child $1000-adult F	or Death Benefits	Exempt	Car, 4 yrs. old or older	Exempt
Ky.	0 - No Maximum x		$1000 E 13/	$[illegible] - one child $[illegible] - family x		$ 500 - child $1000-adult C		Exempt	Cars	Exempt
La.	0 - No Maximum 160A - Rural	$ [illegible] - one 1/ $ [illegible] - family	(If income-producing)			1/		Exempt 18/		
Maine	0 - No Maximum		$[illegible]00-one 19/ 1000-family			$1500 - Per Person F	or $1500 - Prepaid	Exempt	Car	Exempt
Md.	0 - No Maximum				$ 300	$500-ea. child $1000-adult F		Exempt	Car	Exempt
Mass.	0 - No Maximum		20/	$1000 x					1 Car	
Mich.	0 - No Maximum	$1500 - one $2000 - family				$1000 - family x C		Exempt	1 Car 21/	$ 750 21/
Minn.	$ 7500 E All real property			$ 300 - recipient [illegible] one child $ 500 - family		$ 500 - for each person C	$750 each + $200 interest	Exempt		Exempt
Miss.	0 - $ 3500 - one E ($[illegible] Joint Owner)	$500 - 1 child $1000 - family						Exempt	$300 - Car	
Mo.	$10,500 M 22/	$1500 22/				$1000 - Per Person F	or $1000 - Prepaid			

For footnotes see following pages.

14b

State Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families With Dependent Children, Jan. 31, 1973, Page 2

State	Home A=Assessed Value E=Equity M=Market Value O=Must be occupied	Other Real and Personal Property (Combined)	Other Real Property (Non-Home)	Personal Property--Negotiable Assets, Stocks, Bonds, and Other Liquid Reserves	Cash or Savings	Insurance and Burial: Life Insurance C=Cash Value F=Face Value	Insurance and Burial: Burial Insurance or Prepaid Contract	Value Excluded From Consideration as Assets--: Household & Personal Effects	Value Excluded From Consideration as Assets--: Car or Cars for Transportation	Value Excluded From Consideration as Assets--: Tools, Equipment, Livestock
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Mont.	O - Under $5000 x A		Under $1000 x	$ 300 - 1 person; $100 - each added person; $ 600 - family		$5000 - Per Person F	$1000 - person - Irrevocable		$1500 - Car 5/	
Neb.	O - No Maximum	[illegible]				$1000 - Per Person C		Exempt		$3000 21/
Nev.	O - No Maximum					1/ C		Exempt	Car	
N.H.	O - No maximum 23/		6/	$ 500 - family		$3000 Family F		Exempt	Exempt	Exempt
N.J.	O - No Maximum x		24/	One month's requirements 3/				Exempt	$500 - Car	Exempt
N.M.	O - No Maximum		25/ x	$1200 26/	$ 100 - one 26/ $ 150 - family	$550 - family 26/ C		Exempt	Car	Exempt 26/
N.Y.	No Maximum x				$1000-(child's trust fund) x	$ 500 - Per Person F x		Exempt		Exempt
N.C.	O - No Maximum x	[illegible] add. [illegible] x 1/				1/ C		Exempt 27/	$1000 - Car E	
N.D.	No Maximum - 28/			$1000 29/	$ 350	(Value not specified) C		Exempt		29/
Ohio	No Maximum	$ [illegible] - family [illegible]				$500 - each par. $ [illegible] - each child x C		Exempt	$500 30/	Income-producing
Okla.	O - [illegible] x or [illegible]	[illegible]				31/	$1000	Exempt		
Ore.	- No Maximum x	[illegible]			$ 350 - one $1000 - family	$1000 - Per Person C	or Burial Plots	Exempt	Car	
Pa.	O - No Maximum		20/		17/	$ [illegible] 32/ C				
P.R.	O - No Maximum		17/		$1000 x			Exempt	Car	Livestock, Poultry
R.I.	O - No Maximum		6/	[illegible]	$ 300 33/	$ 500 - child $[illegible] - adult F			Car	
S.C.	O - No Maximum		$1000 - family	[illegible] 1/		1/ C				
S.D.	O - No Maximum		1/	$1000 - each parent $ [illegible] - each child x		$1000 - family C		Exempt	[illegible]	
Tenn.	O - [illegible] 34/		13/	$ 500 - 1 to 3 x $[illegible] - more than 3		$ 500 - Per Person C	or $600 each or $1000	Exempt	Car 13/	Income-producing
Tex.	O - No Maximum 35/	$ [illegible] - one $[illegible] - family				$1000 - Per Person F		Exempt	Car (not [illegible])	Exempt
Utah	O - No Maximum	$ 600 - one $[illegible] - family				$ 500 - one C $1000 - family		Exempt	Car	
Vt.	No Maximum x	$ 300 - one $1200 - family				$1100 - Per Person F		Exempt	Car	[illegible] family
Va.	O - No Maximum	13/ x	13/	$ 500 - family		$ 500 C $[illegible] - family F		Exempt	Car	13/
V.I.	O - [illegible]	13/		[illegible]		$1000 - [illegible]		Exempt	Car	
Wash.	O - No Maximum		20/	[illegible] 35/	[illegible] 1/	36/		Exempt	Car 36/	Exempt
W.Va.	O - No Maximum	[illegible] 1/				1/ C	Irrevocable Trust	Exempt	Car - $[illegible] or less x	
Wis.	No Maximum (Assessable Value)		None	[illegible] 1/		1/ C			Car - $[illegible] 1/	
Wyo.	O - [illegible] A	[illegible] 1/		[illegible]		1/ C		Exempt	Car ([illegible])	Exempt

For footnotes see following page.

15b

Item: 7. Property and Income Limitations
Program: AFDC, page 2 c
No. of Programs: 54

Footnotes to chart on "State Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families With Dependent Children, Jan. 31, 1973"

x See published document for details.

1/ Includes cash or face value of insurance without specifying a figure for value of of insurance.

2/ Included in over-all limitation on real and personal property (Col. 2).

3/ Depending upon location of the house.

4/ Includes $600 liquid assets and $100 cash surrender value of insurance or burial arrangements; exempts child's share of an undistributed estate.

5/ California - car up to $1500 in value, if needed for approved employment plan; Georgia - requires that car be needed for transportation to work; Montana - value specified may be exceeded in certain circumstances if car essential for employment or transportation.

6/ Other real property must be liquidated; in Delaware, unless producing income related to its value; in Indiana, unless rented; in New Hampshire, 6 months allowed for disposal if property unoccupied and not producing income.

7/ Non-residence real property is considered a resource liable to conversion to cash within a reasonable time.

8/ Plus money given or bequeathed specifically for burial.

9/ More valuable car must be sold; car limitation does not apply to recipient needing assistance less than 60 days.

10/ House, trailer, or boat lived in or owned by recipient; homestead is defined by County Tax Assessor.

11/ If a child is living with a relative other than his parents who is financially independent, maximum is $600 per child up to $1200 for a sibling group.

12/ May hold specified income-producing resources up to $1000 market value in addition.

13/ Additional real property up to a specified value may be held in those States if producing income: Guam, $3000, market value; Kentucky, up to $5000 equity if producing income; Tennessee, value included in over-all real property amount of $9000; Virgin Islands, $1500, assessed value, real and personal property; Virginia, $5000, plus $400 non-income producing property.

14/ "Tax appraised value." (Hawaii currently appraises property for tax purposes at 70% of market value.)

15/ No maximum is set on total, but values for items of personal property are specified; cash value of insurance and any other cash reserve must be utilized.

16/ Combination of all negotiable assets may not exceed $2000 in value, including cash value of insurance, up to $500 of liquid resources, and value of marketable real property other than the home; excludes real property, other than home, which is non-marketable.

17/ Savings from earnings of children are exempt; Illinois, specifies children in high school and requires plan for future education or vocational training.

18/ Also exempts jewelry up to $100 or of sentimental value and musical instruments.

19/ When equity in saleable real property exceeds this figure, immediate steps must be taken to sell property or "dispose of excess amount."

Item: 7. Property and Income Limitations
Program: AFDC, page 2d
No. of Programs: 54

Footnotes to chart on "State Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families With Dependent Children, July 1, 1973" (continued)

20/ Reasonable efforts must be made to dispose of non-home real property.

21/ Exempt if necessary for an approved employment plan; in Michigan, exemption applies to car if family does not qualify for $750 exemption of farming equipment.

22/ All real and personal property is limited to $10,500. Within this total, family may have reserves of $1500 including cash value of insurance, market value of non-home real property, and certain personal property including cash or securities.

23/ If value exceeds $20,000 (based on 100% assessment) an evaluation and recommendation is made regarding disposal.

24/ No specific limitations on other real property, or on personal property not convertible to cash, but plans for liquidation of such real property within 6 months must be initiated as an eligibility condition.

25/ May be held pending liquidation or demonstration of unsaleability; in New Mexico, modified by specific conditions such as illness of client or repeated efforts to sell; in Puerto Rico, a period of 12 months in which to put the property to some use or to dispose of it; in Washington, must be offered for sale unless it cannot reasonably be sold, rented or leased.

26/ The $1200 maximum includes liquid assets and cash, cash surrender value of life insurance, and farm tools and equipment.

27/ Equity in loan value of non-essential vehicles and non-essential personal property, such as cameras and television sets, is considered as a reserve.

28/ Maximum value is determined by size and needs of family.

29/ Personal property essential to a person's or a family's rehabilitation is exempt from the $1000 limitation.

30/ Exempt up to $1000 value if car is used in producing income; in Tennessee, car exempt if producing $60 yearly net income.

31/ If child is not living with parents, amount is $250 for 1 child, $400 for 2 children, plus $50 for each additional child up to $600, family maximum. Maximums include cash surrender value of life insurance; but increases in cash or loan value due to interest or dividend accruals up to $1000 per insured individual may be held if left on deposit with company.

32/ No maximum on life insurance for children under age 18.

33/ If accumulated from earned income.

34/ Considered a resource in determining eligibility.

35/ May own homestead as defined in State law, made applicable to AFDC by administrative policy.

36/ Combination of all negotiable assets must not exceed $750 for individual and $1450 for 2 persons, with $50 additional for each added family member; these maximums include cash, securities, cars, and insurance.

37/ Limitation $1000 if car needed for access to medical treatment or employment purposes, and no limitation if aid temporary.

Item: 7. Property and Income Limitations
Program: AFDC, page 3
No. of Programs: 54

III. Provisions Prohibiting Transfer or Other Disposition of Property Without Adequate Consideration Prior to Application

States with no specific provision.....24 States

Alaska	Hawaii	Massachusetts	Puerto Rico
Colorado	Illinois	Minnesota	Tennessee
D. C.	Indiana	Nevada	Virgin Islands
Florida	Iowa x	New York	Virginia
Georgia	Louisiana	North Carolina x	West Virginia
Guam	Maine	North Dakota	Wisconsin

x Special provision; see published document.

States with such provision, no time limit specified.....11 States

California	Kentucky	Ohio	Vermont
Connecticut 1/x	Nebraska	South Carolina	Washington x
Idaho	New Jersey	Texas	

1/ Provision relates to supervising relative if legally responsible and included in assistance group. Also, any disposal of real or personal property must be examined to determine the effect on eligibility.
x Other special provision; refer to published document.

States prohibiting such transfer or assignment within a specified number of years prior to receiving assistance.....19 States

State	Years	State	Years
Alabama	1 1/ x	Montana	5
Arizona	5	New Hampshire	5
Arkansas	5 x	New Mexico	2 x
Delaware	2 2/	Oklahoma	5
Kansas	5 x	Oregon	3 3/
Maryland	3	Pennsylvania	2 2/
Michigan	90 days	Rhode Island	5 3/
Mississippi	2	South Dakota	3 x
Missouri	5	Utah	5
		Wyoming	2

1/ Provision applies to "homestead above $2500 or other property worth $2000."
2/ Applies only to property worth $500 or more.
3/ Applies only to transfer of real property.
x Other special provision; refer to published document.

Summary: Within 5 years: 9 States
Within 3 years: 3 States
Within 2 years: 5 States
Within 1 year : 1 State
Within 90 days: 1 State

Appendix C

Characteristics of AFDC Families with Fathers

Source: USDHEW, NCSS, *Findings of the 1973 AFDC Study Part I. Demographic and Program Characteristics*, pp. 25, 72, 78 and 79.

TABLE 9.--AFDC FAMILIES, BY RACIAL/ETHNIC GROUP OF PAYEE, 1973

SPECIFIED NEW REGION AND STATE	TOTAL FAMILIES	OTHER THAN WHITE, AND SPANISH					WHITE	UNKNOWN
		TOTAL	NEGRO/ BLACK	AMERICAN INDIAN	SPANISH ORIGIN/ DESCENT	OTHER		
TOTAL:								
NUMBER	2969891	1816770	1360552	33594	399722	14502	2335936	37185
PERCENT	100.0	60.8	45.8	1.1	13.4	0.5	38.0	1.2
NEW REGION:								
II	529049	73.2	38.1	0.3	34.6	0.3	23.5	3.3
III	335952	59.4	57.1	0.2	2.1	#	38.5	2.1
IV	458017	71.9	71.0	0.3	0.4	#	28.1	0.1
V	619096	54.7	49.7	0.8	4.0	0.2	44.6	0.7
VI	259455	79.8	56.6	2.0	21.1	#	20.1	0.1
VII	121415	42.8	40.7	0.7	1.4	#	57.1	#
VIII	63278	40.7	8.2	10.1	24.3	0.2	58.7	0.5
IX	468296	54.7	27.5	1.7	22.9	2.5	44.2	1.2
STATE:								
ALABAMA	45531	78.8	78.[illegible]	#	0.0	0.0	21.2	0.0
ARIZONA	19600	71.7	16.1	25.[illegible]	29.5	#	28.3	0.0
ARKANSAS	23065	68.0	67.7	#	#	0.0	32.0	0.0
CALIFORNIA	431992	57.1	28.7	0.[illegible]	23.0	0.[illegible]	42.7	1.2
COLORADO	31874	52.9	11.5	0.[illegible]	40.[illegible]	#	46.[illegible]	#
FLORIDA	94622	74.3	72.4	#	1.8	0.0	25.5	#
GEORGIA	99718	76.6	76.5	0.0	#	0.0	23.3	#
ILLINOIS	193107	72.4	63.3	#	8.8	0.0	27.1	#
INDIANA	49526	46.2	44.4	#	1.7	0.0	53.5	#
IOWA	21895	13.3	11.0	0.0	1.4	#	86.5	#
KANSAS	20189	39.2	34.5	0.7	3.9	#	60.7	#
KENTUCKY	42282	39.8	38.8	0.0	0.0	0.0	60.2	0.0
LOUISIANA	65125	84.5	83.9	#	#	0.0	15.[illegible]	#
MARYLAND	61576	70.2	68.6	0.6	0.8	0.0	29.[illegible]	0.0
MICHIGAN	160215	51.5	48.4	1.1	1.8	#	48.4	#
MINNESOTA	37550	17.1	9.4	5.2	2.1	#	76.7	6.2
MISSISSIPPI	46414	87.7	87.4	#	0.0	0.0	12.3	0.0
MISSOURI	67699	54.5	54.3	0.0	#	0.0	45.5	0.0
NEBRASKA	11632	36.5	28.1	4.7	3.5	#	63.4	#
NEW JERSEY	114805	67.8	50.9	0.6	15.8	0.5	31.4	0.9
NEW YORK	358294	70.6	34.8	0.2	30.6	#	24.8	4.5
NORTH CAROLINA	43891	78.3	75.8	2.2	#	0.0	21.7	0.0
NORTH DAKOTA	4013	26.3	#	25.2	0.5	#	73.7	0.0
OHIO	137164	51.7	49.8	#	1.4	#	47.7	0.6
OKLAHOMA	29214	48.3	35.7	9.8	2.6	#	51.3	#
PENNSYLVANIA	169766	50.5	46.7	#	3.7	0.0	45.3	4.2
RHODE ISLAND	14581	21.2	16.9	#	4.0	#	76.8	2.0
SOUTH DAKOTA	6356	43.9	#	41.3	#	0.0	56.0	#
TENNESSEE	56605	63.0	62.7	#	#	#	36.6	#
TEXAS	123932	86.7	52.1	0.0	34.6	0.0	13.3	0.
VIRGINIA	45958	71.0	70.8	0.0	#	0.0	29.0	0.
WEST VIRGINIA	20517	11.3	10.9	0.0	#	#	88.7	0.
WISCONSIN	41534	38.9	33.4	2.0	3.5	#	60.8	#

NOT COMPUTED; BASE TOO SMALL.

TABLE 42.—AFDC FAMILIES WITH NATURAL OR ADOPTIVE FATHER IN HOME, BY HIGHEST GRADE OR LEVEL OF SCHOOL COMPLETED BY FATHER, 1973

SPECIFIED NEW REGION AND STATE	TOTAL OF SUCH FAMILIES	HIGHEST GRADE OR LEVEL OF SCHOOL COMPLETED: NONE, OR LESS THAN 5TH GRADE	5TH OR 6TH GRADE	7TH GRADE	8TH GRADE	9TH GRADE	10TH OR 11TH GRADE	HIGH SCHOOL GRADUATE	SOME COLLEGE; DID NOT GRADUATE	COLLEGE GRADUATE	UNKNOWN
TOTAL:											
NUMBER	379048	68595	31650	19708	48349	25515	55981	46577	13947	2470	66256
PERCENT	100.0	18.1	8.3	5.2	12.8	6.7	14.8	12.3	3.7	0.7	17.5
NEW REGION:											
II	72337	26.0	7.4	2.9	7.0	4.3	11.4	9.5	1.2	*	30.4
III	48046	9.2	9.8	6.3	16.9	12.7	16.7	14.5	1.3	0.0	12.3
IV	43376	37.1	15.2	4.1	13.0	3.5	4.9	4.6	1.1	*	12.3
V	83593	7.2	6.5	5.3	16.7	7.6	22.2	18.5	3.6	0.5	17.3
VI	25192	37.0	13.6	7.2	9.7	5.1	9.3	4.7	2.4	*	12.2
VII	11371	13.2	12.8	4.9	25.4	4.1	12.4	9.8	4.5	*	9.1
VIII	8653	8.4	6.4	7.4	14.5	8.5	23.3	19.4	5.7	*	13.1
IX	62488	14.7	3.6	3.7	8.9	6.3	15.3	11.1	12.3	*	25.9
STATE:											
ALABAMA	3826	37.6	16.6	*	*	*	9.7	6.9	*	3.0	19.6
ARIZONA	2517	46.8	12.8	7.4	9.7	*	5.5	9.2	*	3.0	5.5
ARKANSAS	3097	50.6	23.7	5.4	13.2	*	*	*	3.2	3.0	*
CALIFORNIA	57401	13.6	*	*	9.3	6.8	16.1	11.0	10.2	*	24.6
COLORADO	5046	11.4	8.3	6.8	12.9	6.0	19.7	22.0	4.5	*	7.6
FLORIDA	5720	27.4	*	15.7	*	*	*	*	*	*	31.3
GEORGIA	8078	30.6	11.5	11.4	14.3	8.8	*	*	3.2	3.0	7.1
ILLINOIS	29045	8.6	9.4	5.5	24.2	5.5	21.1	19.7	*	3.0	6.9
INDIANA	3759	9.6	*	*	9.5	*	17.5	11.1	*	0.0	33.3
IOWA	2120	*	8.0	8.0	26.0	11.4	17.9	13.6	*	0.0	19.7
KANSAS	2238	11.8	8.6	5.5	18.3	5.4	15.0	18.2	*	*	11.9
KENTUCKY	6329	37.6	19.5	*	21.9	*	*	*	*	0.0	8.6
LOUISIANA	6466	39.3	17.9	7.1	11.9	*	7.1	*	0.0	0.0	8.3
MARYLAND	5134	*	*	*	12.7	9.9	7.1	7.0	0.0	3.0	49.3
MICHIGAN	19650	3.3	4.7	3.3	12.2	8.5	21.4	16.8	2.5	*	26.9
MINNESOTA	4008	*	0.0	6.3	15.6	7.3	13.6	25.9	9.4	*	17.7
MISSISSIPPI	6903	44.1	11.8	5.3	11.0	*	5.5	*	*	0.0	15.0
MISSOURI	6155	18.4	17.1	*	29.0	*	9.2	*	*	*	13.2
NEBRASKA	858	*	*	*	16.4	*	16.4	16.4	9.9	0.0	22.4
NEW JERSEY	5550	19.6	13.7	*	13.7	*	17.7	9.8	0.0	*	11.7
NEW YORK	41116	9.6	3.3	2.0	8.8	6.1	16.9	15.0	2.2	*	35.9
NORTH CAROLINA	3794	50.0	15.3	8.3	*	*	*	*	0.0	0.0	7.3
NORTH DAKOTA	392	10.7	10.2	*	33.7	*	8.4	13.3	*	0.0	14.3
OHIO	21497	10.5	6.0	7.5	11.9	9.0	27.6	16.4	4.9	*	6.3
OKLAHOMA	4003	28.7	12.2	9.5	18.2	6.1	9.6	7.8	*	*	*
PENNSYLVANIA	30276	4.4	8.7	5.4	18.8	14.4	21.3	20.6	*	0.0	4.4
RHODE ISLAND	1863	*	5.6	*	5.7	*	12.4	15.2	*	*	44.2
SOUTH DAKOTA	638	10.2	7.5	*	36.1	6.4	7.7	15.5	*	0.0	9.1
TENNESSEE	5317	39.5	21.0	11.1	12.3	*	*	6.2	*	0.0	9.3
TEXAS	9033	33.5	15.2	8.8	2.2	7.0	10.2	5.7	*	*	15.7
VIRGINIA	3358	29.9	17.8	16.1	12.9	*	*	*	0.0	0.0	9.7
WEST VIRGINIA	6868	22.8	15.7	7.8	17.9	4.1	8.9	3.9	*	0.0	16.1
WISCONSIN	5634	*	6.0	*	17.1	12.9	18.8	28.2	4.3	*	6.3

* NOT COMPUTED; BASE TOO SMALL.

TABLE 67.--AFDC FAMILIES WITH NATURAL OR ADOPTIVE FATHER IN HOME, BY USUAL OCCUPATION OF FATHER, 1973

SPECIFIED HEW REGION AND STATE	TOTAL OF SUCH FAMILIES	WHITE COLLAR WORKERS: PROFESSIONAL, TECHNICAL, AND KINDRED WORKERS	MANAGERS, ADMINISTRATORS, EXCEPT FARM	SALES WORKERS	CLERICAL AND KINDRED WORKERS	BLUE COLLAR WORKERS: CRAFTSMEN AND KINDRED WORKERS	OPERATIVES, EXCEPT TRANSPORT	TRANSPORT EQUIPMENT OPERATIVES	LABORERS, EXCEPT FARM	FARM WORKERS: FARMERS AND FARM MANAGERS	FARM LABORERS AND FOREMEN
TOTAL:											
NUMBER........	239040	2450	1027	3214	4421	47753	22051	25787	121520	5101	[illegible]
PERCENT........	100.0	2.0	0.4	1.5	1.7	12.6	8.5	6.8	32.2	1.3	[illegible]
HEW REGIONS											
II..............	32397	1.0	0.0	0.7	3.6	6.5	4.5	6.7	26.1	*	[illegible]
III..............	48246	1.1	*	2.4	*	16.3	5.8	6.6	39.1	0.5	[illegible]
IV..............	43776	*	*	1.0	*	10.6	4.0	6.2	26.5	9.8	[illegible]
V..............	[illegible]	1.0	0.6	2.2	0.9	13.7	12.8	8.4	42.8	*	[illegible]
VI..............	[illegible]	*	0.0	*	*	9.8	2.5	7.3	34.2	4.1	[illegible]
VII..............	[illegible]	*	*	1.7	1.2	10.7	4.4	5.3	40.4	1.7	[illegible]
VIII..............	[illegible]	*	*	2.1	*	7.2	7.0	4.6	37.1	1.3	[illegible]
IX..............	[illegible]	[illegible]	*	[illegible]	*	16.4	9.8	6.3	16.7	*	[illegible]
STATES:											
ALABAMA........	[illegible]	[illegible]	*	0.0	*	6.9	*	8.2	38.9	7.0	[illegible]
ARIZONA........	[illegible]	[illegible]	*	*	0.0	11.9	6.4	*	34.0	0.0	[illegible]
ARKANSAS........	[illegible]	[illegible]	0.0	0.0	0.0	6.2	*	*	28.4	7.9	[illegible]
CALIFORNIA........	[illegible]	[illegible]	0.0	4.2	*	[illegible]	10.7	6.8	15.3	*	[illegible]
COLORADO........	[illegible]	0.0	0.0	*	*	6.1	6.1	*	37.8	0.0	[illegible]
DELAWARE........	[illegible]	*	0.0	*	*	13.7	*	*	35.3	0.0	[illegible]
FLORIDA........	[illegible]	[illegible]	*	*	*	14.3	*	10.0	38.6	*	[illegible]
[illegible]	[illegible]	*	0.0	*	*	8.6	19.5	9.4	36.7	0.0	[illegible]
[illegible]	[illegible]	*	0.0	*	*	17.5	15.5	*	25.4	*	[illegible]
[illegible]	[illegible]	[illegible]	0.0	*	*	11.4	7.9	*	45.3	*	[illegible]
[illegible]	[illegible]	*	*	*	*	14.0	8.0	8.6	35.5	*	[illegible]
[illegible]	[illegible]	[illegible]	*	*	0.0	7.0	7.8	4.7	45.3	7.8	[illegible]
[illegible]	[illegible]	*	[illegible]	0.0	0.0	10.3	*	*	32.1	*	[illegible]
[illegible]	[illegible]	*	[illegible]	*	*	9.9	*	14.0	20.2	*	[illegible]
[illegible]	[illegible]	[illegible]	*	*	*	16.9	10.1	8.2	44.4	0.0	[illegible]
[illegible]	[illegible]	*	*	*	*	15.4	7.3	8.3	37.5	*	[illegible]
[illegible]	[illegible]	*	[illegible]	*	0.0	7.4	4.7	4.7	27.6	13.4	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	*	0.0	9.2	*	*	40.8	*	[illegible]
[illegible]	[illegible]	[illegible]	*	*	*	11.4	*	8.2	37.8	*	[illegible]
[illegible]	[illegible]	*	0.0	0.0	*	21.6	11.8	*	25.2	0.0	[illegible]
[illegible]	[illegible]	1.9	[illegible]	*	5.7	6.6	8.2	10.5	31.1	*	[illegible]
[illegible]	[illegible]	0.0	0.0	0.0	0.0	9.7	*	*	34.7	7.0	[illegible]
[illegible]	[illegible]	0.0	[illegible]	*	*	8.4	*	*	31.4	14.3	[illegible]
[illegible]	[illegible]	*	[illegible]	*	0.0	15.7	7.5	8.9	48.3	0.0	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	*	*	10.4	*	4.4	44.2	*	[illegible]
[illegible]	[illegible]	*	*	1.1	*	19.1	11.2	5.0	26.1	0.0	[illegible]
[illegible]	[illegible]	*	*	0.0	*	30.2	23.5	7.6	34.3	0.0	[illegible]
[illegible]	[illegible]	3.3	*	*	0.0	7.7	*	*	21.9	6.2	[illegible]
[illegible]	[illegible]	*	*	0.0	*	8.6	*	*	37.1	*	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	*	*	10.9	*	11.9	29.8	*	[illegible]
[illegible]	[illegible]	[illegible]	0.3	*	*	*	14.8	*	41.9	0.0	[illegible]
[illegible]	[illegible]	*	*	3.0	0.0	10.0	9.7	5.3	53.8	*	[illegible]
[illegible]	[illegible]	[illegible]	*	5.1	*	18.8	9.4	6.0	41.0	0.0	[illegible]

(CONTINUED)

TABLE 47.--AFDC FAMILIES WITH NATURAL OR ADOPTIVE FATHER IN HOME, BY USUAL OCCUPATION OF FATHER, 1973--CONTINUED

SPECIFIED HEW REGION AND STATE	TOTAL OF SUCH FAMILIES	SERVICE WORKERS: SERVICE WORKERS, EXCEPT PRIVATE HOUSEHOLD	SERVICE WORKERS: PRIVATE HOUSEHOLD WORKERS	OCCUPATION UNKNOWN	UNKNOWN WHETHER EVER EMPLOYED	NEVER EMPLOYED
TOTAL:						
NUMBER	279048	26190	347	24603	18114	3842
PERCENT	100.0	6.9	0.1	6.5	4.8	1.0
HEW REGION:						
II	72337	5.5	0.0	10.8	9.3	2.2
III	48646	10.5	#	4.4	2.9	1.2
IV	43376	4.0	0.0	3.3	2.6	1.8
V	33593	6.3	#	4.8	4.2	#
VI	25192	9.4	#	1.8	2.1	0.8
VII	11371	5.5	0.0	8.1	3.8	#
VIII	8653	5.5	#	11.6	6.1	#
IX	62488	4.7	0.0	8.4	5.0	#
STATE:						
ALABAMA	3826	#	0.0	6.9	0.0	0.0
ARIZONA	2517	#	0.0	#	9.2	#
ARKANSAS	3057	5.3	#	0.0	#	#
CALIFORNIA	57401	4.2	0.0	7.6	5.1	0.0
COLORADO	5046	4.5	0.0	16.7	3.8	#
FLORIDA	5720	0.0	0.0	#	#	#
GEORGIA	8078	#	0.0	0.0	#	#
ILLINOIS	29045	7.8	#	#	5.5	0.0
INDIANA	2759	#	0.0	9.5	11.1	0.0
IOWA	2120	6.8	0.0	6.8	#	0.0
KANSAS	2238	5.4	0.0	8.6	#	#
KENTUCKY	6329	#	0.0	#	5.5	#
LOUISIANA	6466	8.3	0.0	#	#	#
MARYLAND	5134	11.3	0.0	16.9	#	0.0
MICHIGAN	15650	6.2	#	4.6	2.7	#
MINNESOTA	4008	5.2	0.0	8.3	#	0.0
MISSISSIPPI	6903	5.5	0.0	#	#	#
MISSOURI	6155	#	0.0	7.9	#	#
NEBRASKA	858	#	0.0	11.7	#	#
NEW JERSEY	5550	#	0.0	0.0	11.8	0.0
NEW YORK	41116	12.9	0.0	9.9	8.8	#
NORTH CAROLINA	3704	#	0.0	#	#	#
NORTH DAKOTA	392	5.4	#	#	10.2	0.0
OHIO	21497	4.5	0.0	7.5	3.7	#
OKLAHOMA	4003	#	0.0	#	#	#
PENNSYLVANIA	30276	13.1	0.0	#	#	#
RHODE ISLAND	1863	8.5	0.0	11.2	0.0	#
SOUTH DAKOTA	638	#	0.0	8.9	11.8	0.0
TENNESSEE	5317	11.1	0.0	#	#	0.0
TEXAS	9033	11.6	0.0	3.7	#	#
VIRGINIA	3358	#	#	9.7	#	0.0
WEST VIRGINIA	6868	2.5	0.0	5.0	5.0	2.9
WISCONSIN	5634	6.9	0.0	#	#	0.0

NOT COMPUTED; BASE TOO SMALL.

Appendix D

Amount of Monthly AFDC-UF Payments, by State July 1973 - June 1974

Source: USDHEW, National Center for Social Statistics, *Public Assistance Statistics*, NCSS Report A-2, Table 5 in monthly issues July 1973 through June 1974.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, July 1973 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients: Total 2/	Number of recipients: Children	Payments to recipients: Total amount	Payments to recipients: Average per--: Family	Payments to recipients: Average per--: Recipient	Percentage change from--: June 1973 in--: Number of recipients	Percentage change from--: June 1973 in--: Amount	Percentage change from--: July 1972 in--: Number of recipients	Percentage change from--: July 1972 in--: Amount
Total....	98,671	456,105	274,692	$26,747,347	$271.03	$58.64	-5.6	-5.1	-20.4	-16.2
Calif.....	32,895	143,726	88,250	8,451,262	256.92	58.80	-7.7	-4.9	-28.2	-23.9
Colo.....	1,078	5,095	2,952	263,948	244.85	51.81	-10.2	-9.9	-47.5	-47.0
Del.....	72	355	211	12,392	172.11	34.91	-2.2	-3.5	-45.0	-44.8
D. C.....	2,356	9,269	6,677	443,151	188.09	47.81	+1.3	+.8	+45.9	+69.5
Guam.....	1	3	1	165	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
Hawaii.....	949	4,228	2,384	331,687	349.51	78.45	-7.3	-5.8	+15.2	-13.4
Ill.....	14,440	72,452	44,083	4,211,935	291.69	58.13	-4.8	-4.6	+16.1	-10.0
Kans.....	246	1,188	698	58,389	237.35	49.15	-17.6	-25.0	-53.6	-58.7
Md.....	776	3,506	2,029	158,867	204.73	45.31	-2.8	-2.9	-7.9	-4.6
Mass.....	2,553	12,325	7,665	715,242	280.16	58.03	+1.6	-23.0	+2.5	+1.4
Mich.....	10,360	51,076	30,577	3,393,069	327.52	66.43	-5.6	-5.6	-8.1	-7.6
Minn.....	1,423	6,490	3,732	451,078	316.99	69.50	-9.5	+12.5	-12.7	-19.7
Nebr.....	30	194	133	6,825	(3/)	35.18	-13.4	-14.3	-64.9	-68.5
N. Y.....	6,357	30,534	18,265	4/ 2,194,324	345.18	71.82	-9.6	-4.2	-13.0	-4.2
Ohio.....	9,941	47,067	27,685	2,017,239	202.92	42.86	-2.4	-1.9	-16.8	-16.0
Okla.....	132	704	451	27,584	208.97	39.18	-15.8	-16.5	-51.1	-49.4
Oreg.....	2,434	10,107	5,705	633,652	260.33	62.69	-4.9	+18.8	-17.3	+.1
Pa.....	2,654	12,022	6,725	753,916	284.07	62.71	-5.6	-8.0	-28.1	-23.2
R. I.....	380	1,862	1,128	91,986	242.07	49.40	-.8	-3.2	-45.9	-46.5
Utah 5/.....	1,808	8,588	5,226	428,160	236.81	49.86	+4.9	+4.8	+.7	+.7
Vt.....	624	2,980	1,740	194,806	312.19	65.37	-8.7	-8.4	+9.4	+13.5
Wash.....	4,199	17,173	9,117	1,108,926	264.09	64.57	-2.9	-2.4	-23.7	-22.4
W. Va.....	965	4,663	2,980	196,180	203.40	42.07	-15.9	-13.0	-51.4	-25.9
Wis. 5/.....	2,018	10,478	6,278	602,564	298.59	57.51	+5.5	-12.0	-22.4	-31.0

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families; percentage change on fewer than 100 recipients.
4/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
5/ Estimated by State.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, August 1973 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		July 1973 in--		August 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	95,837	439,495	264,288	$26,181,909	$273.19	$59.57	-3.0	-1.6	-22.6	-19.2
Calif.....	31,581	137,631	84,174	8,142,492	257.83	59.16	-4.2	-3.7	-28.7	-25.9
Colo.....	992	4,716	2,744	243,545	241.51	51.64	-7.4	-7.7	-47.8	-47.9
Del.....	65	315	186	10,986	169.02	34.88	-11.3	-11.3	-53.0	-56.1
D. C.....	2,359	9,278	6,683	443,917	188.18	47.85	+.1	+.2	+39.6	+57.3
Hawaii.....	872	3,906	2,253	321,028	361.15	82.19	-7.6	-3.2	-21.5	-20.8
Ill.....	14,087	70,300	42,724	4,155,123	294.96	59.11	-3.0	-1.3	-19.9	-13.8
Kans.....	231	1,121	664	56,705	245.48	50.58	-5.6	-2.9	-54.1	-58.2
Md.....	772	3,564	2,055	161,072	201.64	45.45	+1.1	+1.4	-8.3	-5.1
Mass.....	2,579	12,340	7,660	733,390	284.37	59.43	+.1	+2.5	+2.7	+5.6
Mich.....	10,037	49,421	29,375	3,359,814	334.74	67.98	-3.2	-1.0	-17.6	-13.7
Minn.....	1,360	6,253	3,619	426,580	313.66	68.22	-3.7	-5.4	-15.6	-25.8
Nebr.....	24	156	107	5,672	3/	36.36	-19.6	-16.9	-71.8	-71.7
N. Y.....	6,177	29,538	17,600	4/ 2,145,431	347.33	72.63	-3.3	-2.2	-14.3	-10.3
Ohio.....	9,760	46,196	27,172	1,994,478	204.35	43.17	-1.9	-1.1	-17.9	-16.4
Okla.....	126	712	471	25,846	205.13	36.30	+1.1	-6.3	-46.9	-48.5
Oreg.....	2,514	10,056	5,656	664,952	264.50	66.12	-.5	+4.9	-18.5	+13.4
Pa.....	2,610	11,797	6,587	776,288	297.43	65.80	-1.9	+3.0	-25.4	-23.7
R. I.....	374	1,825	1,105	90,677	242.45	49.69	-2.0	-1.4	-47.1	-48.2
Utah 5/.....	1,933	7,624	4,809	382,995	198.14	50.24	-1.0	+15.7	-18.7	-18.0
Vt.....	613	2,892	1,678	190,612	311.95	65.91	-3.0	-2.2	+11.9	+16.8
Wash.....	4,213	17,113	9,028	1,113,696	264.35	65.08	-.3	+.4	-23.6	-20.3
W. Va.....	870	4,308	2,747	182,526	209.80	42.37	-7.6	-7.0	-47.1	-50.2
Wis. 5/.....	1,688	8,453	4,991	554,083	328.23	65.55	---	---	---	---

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families.
4/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
5/ Estimated by State.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, September 1973 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		August 1973 in--		September 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	91,020	421,569	254,088	3/$26,070,428	3/ $286.43	3/ $61.84	-4.0	3/ -0.4	-24.1	3/ -13.7
Calif.....	29,541	129,677	79,662	8,053,648	272.63	62.11	-5.8	-1.1	-29.9	-23.5
Colo.....	993	4,690	2,717	242,086	243.79	51.62	-.6	-.6	-44.8	-44.9
Del.....	58	270	156	9,238	159.28	34.21	-14.3	-15.9	-50.5	-52.0
D. C.....	2,455	9,673	6,975	461,169	187.85	47.68	+4.3	+3.9	+42.7	+54.7
Hawaii.....	768	3,499	2,010	274,056	356.84	78.32	-10.4	-14.6	-29.3	-34.9
Ill.....	13,581	67,941	41,364	3,988,123	293.65	58.70	-3.4	-4.0	-20.7	-17.4
Kans.....	209	1,016	600	50,795	243.04	50.00	-9.4	-10.4	-54.9	-60.2
Md.....	657	3,018	1,727	135,177	205.75	44.79	-14.8	-16.1	-17.2	-16.0
Mass.....	2,595	12,390	7,680	3/ 1,156,612	3/ 445.71	3/ 93.35	+.4	3/ +57.7	+3.2	3/ -33.5
Mich.....	9,540	47,191	28,317	3,327,747	348.82	70.52	-4.5	-1.0	-23.6	-19.5
Minn.....	1,316	6,090	3,565	421,431	320.24	69.20	-2.6	-1.2	-15.4	-25.2
Nebr.....	22	140	98	5,174	(4/)	36.96	-10.3	-8.8	-72.1	-71.7
N. Y.....	6,012	28,737	17,107	3/ 2,090,251	347.68	72.74	-2.7	-2.6	-16.2	-10.2
Ohio 5/.....	9,760	46,196	27,172	1,994,478	204.35	43.17	---	---	---	---
Okla.....	112	591	377	23,166	206.84	39.20	-17.0	-10.4	-51.4	-48.7
Oreg.....	1,860	9,217	5,198	614,524	330.39	66.67	-8.3	-7.6	-24.7	-3.2
Pa.....	2,495	11,286	6,308	763,356	305.95	67.64	-4.3	-1.7	-26.0	-13.1
R. I.....	354	1,714	1,031	85,110	240.42	49.66	-6.1	-6.1	-49.4	-50.8
Utah 6/.....	1,408	6,914	4,362	312,646	194.43	45.22	-9.3	-18.4	-28.2	-35.8
Vt.....	625	2,939	1,702	193,617	309.79	65.88	+1.6	+1.6	+13.8	+16.7
Wash.....	4,110	16,679	8,786	1,135,387	276.25	68.07	-2.5	+1.9	-25.4	-23.3
W. Va.....	850	4,237	2,711	186,483	219.39	44.01	-1.6	+2.2	-43.3	-21.7
Wis.....	1,499	7,464	4,483	546,154	364.35	73.17	-8.4	-.2	-43.4	-37.0

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $310,000 representing grants for special needs in Massachusetts for the quarter, October-December 1973. The average payments and percentage changes are affected accordingly.
4/ Average payment not computed on base of fewer than 50 families.
5/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
6/ Represents data for August; September data not reported.
7/ Estimated by State.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, October 1973 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		September 1973 in--		October 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	89,124	411,459	248,381	$25,861,351	$290.17	$62.85	-2.1	-0.8	-24.6	-18.4
Calif.....	28,845	126,363	77,932	8,049,858	279.07	63.70	-1.6	(3/)	-30.6	-23.8
Colo.....	926	4,399	2,551	263,439	284.49	60.02	-6.4	+8.8	-45.8	-38.7
Del.....	44	205	120	6,838	(4/)	33.36	-24.1	-26.0	-63.1	-65.1
D. C.....	2,500	9,906	7,064	468,068	187.23	47.73	+1.4	+1.5	+24.3	+41.3
Hawaii.....	689	3,090	1,745	245,140	355.79	79.33	-11.7	-10.6	-36.8	-36.3
Ill.....	13,398	66,943	40,773	4,481,968	334.53	66.95	-1.5	+12.4	-20.3	-8.4
Kans.....	194	917	534	46,701	240.73	50.93	-9.7	-8.1	-56.1	-61.0
Md.....	642	2,868	1,669	132,007	205.62	46.03	-5.0	-2.3	-16.1	-13.0
Mass.....	2,619	12,435	7,698	759,395	289.96	61.07	+.4	-34.3	-44.3	+10.9
Mich.....	9,379	46,321	27,763	3,362,925	358.56	72.60	-1.8	+1.1	-21.4	-15.8
Minn.....	1,296	5,900	3,451	427,079	329.54	72.39	-3.1	+1.3	-20.4	-25.7
Mo.....	1	4	3	43	(4/)	(4/)	(3/)	(3/)	(3/)	(3/)
Nebr.....	18	112	76	3,934	(4/)	35.13	-20.0	-24.0	-74.9	-73.5
N. Y.....	5,793	27,717	16,338	5/ 2,019,836	348.65	72.57	-3.5	-3.4	-17.1	-10.2
Ohio 3/.....	9,760	46,196	27,272	1,996,478	204.55	43.17	---	---	---	---
Okla.....	103	528	332	25,079	243.49	47.50	-10.7	+8.3	-53.2	-40.1
Oreg.....	2,176	9,217	5,205	657,088	301.97	71.29	0	+6.9	-24.4	+4.6
Pa.....	2,558	11,583	6,454	591,676	231.30	51.17	+2.5	-22.5	-26.2	-33.2
R. I.....	326	1,568	943	76,092	233.41	48.53	-8.5	-10.6	-50.5	-53.5
Utah 3/.....	1,114	5,456	3,470	309,978	278.26	56.81	---	---	---	---
Vt.....	594	2,835	1,644	183,526	308.97	64.74	-3.5	-5.2	+11.8	+12.5
Wash.....	3,986	16,189	8,345	1,103,620	276.87	68.17	-2.9	-2.8	-27.0	-22.9
W. Va.....	768	3,825	2,454	158,210	206.00	41.36	-9.7	-15.2	-47.1	-48.7
Wis.....	1,393	7,012	4,226	494,373	354.96	70.50	-6.1	-9.5	-45.0	-41.4

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Decrease of less than 0.05 percent.
4/ Average payment not computed on base of fewer than 50 families or recipients.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
7/ Represents data for September; October data not reported.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, November 1973 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		October 1973 in--		November 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	87,599	402,694	243,262	$25,172,275	$287.36	$62.51	-1.8	-3.0	-25.9	-20.3
Calif.....	28,675	125,387	77,479	7,331,296	255.67	58.47	-.8	-8.9	-31.3	-30.9
Colo.....	877	4,171	2,431	250,630	285.78	60.09	-5.0	-4.9	-46.6	-39.9
Del.....	49	220	123	7,443	(3/)	33.83	+7.3	+8.8	-54.7	-57.1
D. C. 4/.....	2,500	9,806	7,064	468,068	187.23	47.73	---	---	---	---
Hawaii.....	657	2,924	1,660	232,177	353.39	79.40	-5.4	-.3	-41.4	-29.9
Ill.....	12,893	64,694	39,527	4,296,455	333.24	66.41	-3.4	-4.1	-21.9	-10.6
Kans.....	165	809	480	42,943	260.26	53.08	-11.8	-8.0	-57.4	-60.2
Md.....	611	2,772	1,613	229,021	211.16	48.54	-3.3	-2.3	-27.6	-24.6
Mass.....	2,622	12,475	7,719	804,882	306.97	64.52	+.3	+6.0	+4.0	+17.2
Mich.....	9,135	45,073	26,999	3,253,164	356.12	72.18	-2.7	-3.3	-21.4	-16.1
Minn.....	1,210	5,513	3,193	401,483	331.80	72.82	-6.6	-6.0	-25.7	-30.6
Mo.....	5	22	12	768	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
Nebr.....	17	111	76	4,039	(3/)	36.39	-.9	+2.7	-67.7	-67.3
N. Y.....	5,640	26,874	16,033	5/ 1,969,934	349.28	73.30	-3.0	-2.5	-20.1	-12.5
Ohio.....	9,239	43,537	25,494	2,027,616	219.46	46.57	-2.7	-2.5	-16.8	-9.3
Okla.....	96	494	312	23,204	241.71	46.97	-6.4	-7.5	-54.9	-42.8
Oreg.....	2,448	9,377	5,275	704,826	287.92	75.17	+1.7	+7.3	-29.4	+12.9
Pa.....	2,464	11,069	6,147	712,180	289.03	64.34	-4.3	+20.4	-24.7	-20.2
R. I.....	331	1,654	1,018	2/ 131,435	(3/)	(3/)	+5.3	(3/)	-43.1	(3/)
Utah 6/.....	1,114	5,456	3,470	309,978	278.26	56.81	---	---	---	---
Vt.....	380	2,773	1,632	179,838	310.07	64.85	-2.2	-2.0	-48.1	-49.9
Wash.....	4,305	17,642	9,412	1,220,295	283.46	69.17	+9.0	+10.6	-27.9	-21.4
W. Va.....	627	3,154	2,058	138,390	220.72	43.88	-17.5	-12.5	-58.9	-60.0
Wis.....	1,339	6,687	4,035	532,210	397.47	79.59	-4.6	+7.7	-45.0	-32.9

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
4/ Represents data for October; November data not reported.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
7/ Average payment and percentage changes not computed; payments made bi-weekly.
8/ Represents data for September; October and November data not reported.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, December 1973 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		November 1973 in--		December 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	90,681	415,510	250,547	3/ $26,293,049	3/ $289.95	3/ $63.28	+3.2	3/ +4.4	-26.0	3/ -20.5
Calif.....	30,299	132,676	81,809	8,031,108	265.06	60.55	+5.8	+9.5	-29.7	-28.2
Colo.....	913	4,231	2,514	260,147	284.94	60.07	+3.8	+3.8	-46.2	-39.8
Del.....	59	265	148	8,828	149.63	33.31	+20.5	+18.6	-47.9	-51.2
D. C.....	2,621	10,199	7,371	477,232	182.08	46.79	+2.8	+.9	+17.0	+25.7
Hawaii.....	585	2,594	1,648	201,145	343.84	77.54	-11.3	-13.4	-46.6	-49.0
Ill.....	12,645	63,834	39,140	4,175,316	330.20	65.41	+1.3	-2.8	-23.1	-15.4
Kans.....	160	775	457	41,216	257.60	53.18	-4.2	-4.0	-61.6	-62.5
Md.....	577	2,654	1,555	121,761	211.02	45.88	-4.3	-5.6	-33.5	-21.0
Mass.....	2,639	12,572	7,760	3/ 963,981	3/ 365.28	3/ 76.68	+.8	3/ +19.8	-1.5	3/ +11.9
Mich.....	9,457	46,573	27,844	3,369,714	356.32	72.35	+3.3	+3.6	-20.2	-14.0
Minn.....	1,184	5,417	3,149	381,860	322.52	70.49	-1.7	-4.9	-30.6	-35.0
Mo.....	5	22	12	853	(4/)	(4/)	(4/)	(4/)	(5/)	(5/)
Nebr.....	16	103	72	3,753	(4/)	36.44	-7.2	-7.1	-72.8	-72.3
N. Y.....	5,630	27,094	16,229	6/ 2,019,585	358.72	74.54	+.8	+2.5	-22.6	-14.1
Ohio.....	9,096	42,919	25,147	1,997,398	219.59	46.54	-1.4	-1.5	-17.0	-9.5
Okla.....	92	477	303	22,469	244.23	47.10	-3.4	-3.2	-57.0	-44.8
Oreg.....	3,399	12,748	6,857	982,743	289.13	77.09	+35.9	+39.4	-13.4	+31.1
Pa.....	2,305	10,172	5,570	538,257	233.52	52.92	-8.1	-24.4	-30.6	-44.2
R. I.....	321	1,604	986	87,520	(7/)	(7/)	-3.0	(7/)	-41.8	(7/)
Utah 8/.....	1,144	5,627	3,566	311,340	272.33	55.37	---	---	---	---
Vt.....	583	2,784	1,638	192,817	330.73	69.26	+.4	+7.2	+7.0	+15.7
Wash.....	4,810	19,973	10,739	1,414,329	294.08	70.82	+13.2	+15.9	-26.3	-17.9
W. Va.....	680	3,381	2,171	155,902	229.27	46.11	+7.2	+12.7	-41.6	-38.2
Wis.....	1,461	6,766	4,062	533,375	365.08	78.83	+1.2	+.2	-43.3	-36.4

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $314,000 representing grants for special needs in Massachusetts for the quarter January-March 1974. The average payments and percentage changes are affected accordingly.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
7/ Average payment and percentage changes not computed; payments made bi-weekly.
8/ Represents data for October; November and December data not reported.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, January 1974 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		December 1973 in--		January 1973 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	95,898	439,050	264,164	$27,802,561	$289.92	$63.32	+5.7	+5.7	-24.7	-23.5
Calif.....	32,762	142,747	88,857	8,562,222	261.35	59.98	+7.6	+6.6	-26.7	-25.2
Colo.....	1,135	5,312	3,057	320,844	282.68	60.40	+22.7	+23.3	-39.8	-32.7
Del.....	63	281	159	9,293	147.51	33.07	+6.0	+5.3	-43.2	-47.1
D. C.....	2,638	10,267	7,435	481,972	182.70	46.94	+.7	+1.0	+32.3	+29.8
Hawaii.....	603	2,665	1,491	212,050	251.71	79.58	+2.7	+5.4	-46.3	-44.9
Ill.....	13,112	65,978	40,380	4,468,334	340.78	67.72	+3.4	+7.0	-26.1	-14.3
Iowa.....	17	73	39	4,985	(3/)	68.29	(4/)	(4/)	(4/)	(4/)
Kans.....	211	1,000	584	52,316	247.94	52.32	+29.0	+26.9	-53.4	-55.5
Md.....	869	3,930	2,276	187,008	215.20	47.58	+48.1	+53.6	-17.0	-10.8
Mass.....	1,541	7,017	3,957	500,123	324.54	71.27	(3/)	(3/)	(3/)	(3/)
Mich.....	10,419	50,809	30,143	3,672,050	352.44	72.27	+9.1	+9.0	-15.5	-9.7
Minn.....	1,195	5,512	3,205	405,461	339.30	73.56	+1.8	+6.2	-33.2	-35.6
Mo.....	6	25	13	896	(3/)	(3/)	(3/)	(3/)	(6/)	(6/)
Nebr.....	18	115	79	4,185	(3/)	36.39	+11.7	+11.5	-69.8	-70.4
N. Y.....	5,737	27,513	16,375	2/ 2,225,173	387.86	80.88	+1.5	+10.2	-23.7	-10.1
Ohio.....	9,652	45,319	26,421	2,104,102	218.00	46.43	+5.6	+5.3	-13.4	-6.0
Okla.....	78	414	265	18,429	236.27	44.51	-13.2	-18.0	-66.7	-59.9
Oreg.....	3,756	15,830	8,604	917,629	244.31	57.97	+24.2	-6.6	-11.7	+3.0
Pa.....	2,359	10,372	5,666	666,626	282.59	64.27	+2.0	+23.8	-32.1	-22.4
R. I.....	351	1,715	1,036	103,919	(3/)	(3/)	+6.9	(3/)	-41.5	(3/)
Utah 7/.....	1,094	5,542	3,498	325,759	297.77	58.78	---	---	---	---
Vt.....	622	2,950	1,730	206,774	332.43	70.09	+6.0	+7.2	+4.7	+12.8
Wash.....	5,448	22,832	12,326	1,586,093	291.13	69.47	+14.3	+12.1	-22.8	-14.9
W. Va.....	747	3,656	2,310	190,000	254.35	51.97	+8.1	+21.9	-61.2	-53.4
Wis.....	1,465	7,176	4,258	576,286	393.37	80.31	+6.1	+8.0	-42.4	-32.5

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
4/ Program initiated January 1974.
5/ Not computed; data not comparable.
6/ Program reinstated October 1973.
7/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
8/ Average payment and percentage changes not computed; payments made bi-weekly.
9/ Represents data for December; January data not reported.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, February 1974 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients: Total 2/	Number of recipients: Children	Payments to recipients: Total amount	Payments to recipients: Average per--: Family	Payments to recipients: Average per--: Recipient	Percentage change from--: January 1974 in--: Number of recipients	Percentage change from--: January 1974 in--: Amount	Percentage change from--: February 1973 in--: Number of recipients	Percentage change from--: February 1973 in--: Amount
Total.....	101,325	460,943	277,157	$29,385,816	$290.02	$63.75	+5.0	+5.7	-21.8	-15.1
Calif.....	33,997	147,543	91,734	8,866,439	260.80	60.09	+3.4	+3.6	-25.7	-23.5
Colo.....	1,443	6,619	3,754	402,822	279.16	60.86	+24.6	+25.6	-24.8	-15.9
Del.....	65	292	161	10,101	155.40	34.59	+3.9	+8.7	-42.4	-42.6
D. C.....	2,681	10,403	7,533	481,808	179.71	46.31	+1.3	(3/)	+34.6	+27.0
Hawaii.....	603	2,673	1,489	217,109	360.05	81.22	+.3	+2.4	-46.4	-43.8
Ill.....	13,332	66,916	40,871	4,390,778	329.34	65.62	+1.4	-1.7	-25.4	-15.8
Iowa.....	40	178	98	15,374	(4/)	86.37	(4/)	(4/)	(5/)	(5/)
Kans.....	249	1,173	662	63,890	256.59	54.47	+17.3	+22.1	-46.6	-46.2
Md.....	815	3,685	2,125	181,010	222.10	49.12	-6.2	-3.2	-25.8	-18.2
Mass.....	1,750	7,920	4,657	523,882	299.36	66.15	+12.9	+4.8	(6/)	(6/)
Mich.....	11,040	53,591	31,651	3,911,005	354.26	72.98	+5.5	+6.5	-11.8	-5.4
Minn.....	1,228	5,628	3,266	417,800	340.23	74.24	+2.1	+3.0	-32.8	-33.8
Mo.....	10	40	20	1,498	(4/)	(4/)	(4/)	(4/)	(7/)	(7/)
Nebr.....	21	133	91	4,849	(4/)	36.46	+15.7	+15.9	-63.2	-62.3
N. Y.....	7,064	32,226	19,720	8/ 2,914,543	412.59	90.44	+17.1	+31.0	-11.7	+16.0
Ohio.....	10,192	47,414	27,475	2,209,869	216.82	46.61	+4.6	+5.0	-12.5	-5.0
Okla.....	103	521	324	23,930	232.33	45.93	+25.8	+29.8	-58.0	-48.1
Oreg.....	4,004	16,852	9,054	984,466	245.87	58.42	+6.5	+7.3	-2.1	+10.5
Pa.....	2,353	10,283	5,583	524,174	222.77	50.97	-.9	-21.4	-31.3	-44.7
R. I.....	392	1,882	1,122	112,841	(9/)	(9/)	+9.7	(9/)	-36.7	(9/)
Utah 10/.....	1,103	5,657	3,567	334,757	303.50	59.18	---	---	---	---
Vt.....	705	3,327	1,942	234,428	332.52	70.46	+12.8	+13.4	+6.7	+15.3
Wash.....	5,720	24,039	13,006	1,726,177	301.78	71.81	+5.3	+8.8	-17.4	-7.8
W. Va.....	836	4,081	2,580	193,742	231.75	47.47	+11.6	+2.0	-56.1	-52.8
Wis.....	1,579	7,867	4,632	638,524	404.39	81.16	+9.6	+10.8	-38.3	-27.5

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Decrease of less than 0.05 percent.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Program initiated January 1974.
6/ Not computed; data not comparable.
7/ Program reinstated October 1973.
8/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
9/ Average payment and percentage changes not computed; payments made bi-weekly.
10/ Represents data for January; February data not reported.

19/ Represents data for January; February data not reported.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, March 1974 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		February 1974 in--		March 1973 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	102,627	465,780	279,770	3/ $29,815,344	3/ $290.52	3/ $64.01	+1.0	3/ +1.4	-21.5	3/ -14.7
Calif.....	34,483	149,864	93,230	8,995,512	260.87	60.02	+1.6	+1.5	-26.1	-22.6
Colo.....	1,541	6,994	3,931	417,241	270.76	59.66	+5.7	+3.6	-19.8	-8.1
Del.....	68	306	169	10,552	155.18	34.48	+4.8	+4.5	-38.2	-38.5
D. C.....	2,754	10,638	7,693	494,214	179.45	46.46	+2.3	+2.6	+23.7	+17.0
Hawaii.....	620	2,773	1,557	217,646	351.04	78.49	+3.7	+.2	-46.1	-44.6
Ill.....	13,235	66,440	40,585	4,400,061	332.46	66.23	-.7	+.2	-25.6	-18.9
Iowa.....	79	372	215	29,117	368.57	78.27	+109.0	+89.4	(4/)	(4/)
Kans.....	245	1,169	686	62,392	254.66	53.37	-.3	-2.3	-44.2	-46.9
Md.*.....	788	3,251	1,891	167,232	212.22	51.44	-11.8	-7.6	-28.4	-23.4
Mass.....	1,886	8,510	4,995	3/ 794,259	3/ 421.13	3/ 93.33	+7.4	3/ +51.6	-29.5	3/ -14.3
Mich.....	11,704	56,563	33,289	4,095,388	349.91	72.40	+5.5	+4.7	-7.9	-1.7
Minn.....	1,221	5,632	3,270	418,820	343.01	74.36	+.1	+.2	-31.8	-33.2
Mo.....	12	47	23	1,784	(5/)	(5/)	(5/)	(5/)	(6/)	(6/)
Nebr.....	22	134	90	4,905	(5/)	36.60	+.8	+1.2	-64.8	-64.4
N. Y.....	6,427	29,572	18,024	7/ 2,554,928	397.53	86.40	-8.2	-12.3	-20.3	-2.1
Ohio.....	10,682	49,447	28,597	2,304,840	215.77	46.61	+4.3	+4.3	-10.7	-3.4
Okla.....	107	536	334	25,609	239.34	47.78	+2.9	+7.0	-58.7	-46.9
Oreg.....	4,028	16,603	8,880	999,898	248.24	60.22	-1.5	+1.6	+1.4	+23.3
Pa.....	2,176	9,504	5,158	557,888	256.38	58.70	-7.6	+6.4	-36.0	-39.4
R. I.....	387	1,828	1,074	112,656	291.10	61.63	-2.9	-.2	-36.2	-21.6
Utah.....	1,214	6,056	3,784	361,638	297.89	59.72	+3.7	+2.1	-34.4	-23.3
Vt.....	785	3,654	2,104	259,427	330.48	71.00	+9.8	+10.7	+4.8	+13.8
Wash.....	5,670	23,780	12,869	1,672,371	294.95	70.33	-1.1	-3.1	-13.1	-1.7
W. Va.....	831	4,049	2,581	174,509	210.00	43.10	-.8	-9.9	-55.0	-54.3
Wis.....	1,662	8,058	4,741	682,457	410.62	84.69	+2.4	+6.9	-35.7	-19.1

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $213,000 representing grants for special needs in Massachusetts for the quarter April-June 1974. The average payments and percentage changes are affected accordingly.
4/ Program initiated January 1974.
5/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
6/ Program reinstated October 1973.
7/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, April 1974 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		March 1974 in--		April 1973 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	99,911	455,400	273,315	$28,729,652	$287.55	$63.09	-2.2	-3.6	-19.6	-12.2
California.....	32,989	144,246	89,791	8,574,814	259.94	59.45	-3.7	-4.7	-26.5	-21.6
Colorado.....	1,511	6,714	3,720	392,636	259.85	58.48	-4.0	-3.9	-14.1	-3.4
Delaware.....	65	298	169	10,219	157.22	34.29	+2.6	-3.2	-36.1	-37.7
Dist. of Col...	2,828	10,863	7,855	588,205	207.99	54.15	+2.1	+19.0	+21.8	+35.2
Guam.....	1	6	4	270	(3/)	(3/)	(4/)	(4/)	(4/)	(4/)
Hawaii.....	626	2,815	1,584	228,981	365.78	81.34	+1.5	+5.2	-44.7	-41.3
Illinois.....	12,516	63,005	38,595	4,109,914	328.37	65.23	-5.2	-6.6	-26.1	-18.5
Iowa.....	110	502	283	37,375	339.77	74.45	+34.9	+28.4	(3/)	(3/)
Kansas.....	231	1,076	619	58,194	251.92	54.08	-8.0	-6.7	-45.3	-45.4
Maryland.....	585	2,950	1,741	126,142	215.63	42.76	-9.3	-24.6	-30.6	-36.7
Massachusetts..	2,038	9,127	5,312	622,920	305.65	68.25	+7.3	-21.6	-24.8	-8.0
Michigan.....	12,217	58,997	34,676	4,261,521	348.82	72.23	+4.3	+4.1	-.5	+6.0
Minnesota.....	1,173	5,444	3,171	406,209	346.30	74.62	-3.3	-3.0	-32.4	-32.1
Missouri.....	10	35	15	1,430	(3/)	(3/)	(3/)	(3/)	(6/)	(6/)
Nebraska.....	24	149	101	5,484	(3/)	36.81	+11.2	+11.8	-53.1	-52.1
New York.....	6,019	28,445	17,308	7/ 2,350,052	390.44	82.62	-3.8	-8.0	-20.9	-8.7
Ohio.....	10,847	49,762	28,584	2,331,710	214.96	46.86	+.6	+1.2	-6.9	+1.7
Oklahoma.....	94	467	290	22,861	243.20	48.95	-12.9	-10.7	-59.0	-46.6
Oregon.....	3,815	16,026	8,643	983,810	257.88	61.39	-3.5	-1.6	+8.8	+31.8
Pennsylvania...	2,220	9,628	5,196	577,890	260.31	60.02	+1.3	+3.6	-32.3	-32.0
Rhode Island...	367	1,727	1,010	105,185	286.61	60.91	-5.3	-6.6	-30.8	-18.3
Utah.....	1,156	5,796	3,632	350,271	303.00	60.43	-4.3	-3.1	-34.0	-21.9
Vermont.....	862	4,044	2,341	288,191	334.33	71.26	+10.7	+11.1	+5.8	+14.6
Washington.....	3,284	21,880	11,782	1,527,010	288.99	69.79	-8.0	-8.7	-7.5	+.6
West Virginia..	688	3,363	2,146	145,051	210.83	43.13	-16.9	-16.9	-56.0	-53.9
Wisconsin.....	1,636	8,035	4,747	623,307	380.99	77.57	-.3	-8.7	-23.0	-13.2

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
4/ No payments made in prior period.
5/ Program initiated January 1974.
6/ Program reinstated October 1973.
7/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, May 1974 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		April 1974 in--		May 1973 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	94,762	432,234	259,336	$27,109,440	$286.08	$62.72	-5.1	-5.6	-17.6	-10.8
California.....	30,594	134,528	83,547	7,857,562	256.83	58.41	-6.7	-8.4	-23.7	-21.4
Colorado.....	1,282	5,704	3,167	331,376	258.48	58.10	-15.0	-15.6	-16.7	-7.2
Delaware.....	57	256	143	9,268	162.60	36.20	-14.1	-9.3	-44.9	-41.6
Dist. of Col...	2,922	11,168	8,064	596,328	204.08	53.40	+2.8	+1.4	+24.1	+38.1
Hawaii.....	629	2,787	1,550	223,309	355.02	80.13	-1.0	-2.5	-43.0	-41.7
Illinois.....	11,866	59,679	36,589	3,878,835	326.89	64.99	-5.3	-5.6	-26.4	-19.5
Iowa.....	113	522	297	35,575	314.82	68.15	+4.0	-4.8	(3/)	(3/)
Kansas.....	200	923	527	47,902	239.51	51.90	-14.2	-17.7	-47.0	-45.2
Maryland.....	486	2,183	1,271	108,404	223.05	49.66	-26.0	-14.1	-45.5	-42.9
Massachusetts..	2,078	9,339	5,435	661,474	318.32	70.83	+2.3	+6.2	-23.7	-2.4
Michigan.....	12,208	58,952	34,644	4,250,609	348.18	72.10	-.1	-.3	+3.1	+11.1
Minnesota.....	1,103	5,120	2,994	379,201	343.79	74.06	-6.0	-6.6	-35.8	-32.5
Missouri.....	9	32	14	1,302	(4/)	(4/)	(4/)	(4/)	(5/)	(5/)
Nebraska.....	17	108	74	4,067	(4/)	37.66	-27.5	-25.8	-54.8	-50.4
New York.....	5,675	26,835	16,368	6/ 2,261,711	398.54	84.28	-5.7	-3.8	-22.4	-8.6
Ohio.....	10,770	49,255	28,181	2,304,860	214.01	46.79	-1.0	-1.2	-2.6	+6.2
Oklahoma.....	83	418	265	20,604	248.24	49.29	-10.5	-9.9	-58.0	-45.3
Oregon.....	3,322	13,725	7,425	878,485	264.44	64.01	-14.4	-10.7	+8.7	+37.5
Pennsylvania...	2,267	9,861	5,339	657,754	290.14	66.70	+2.4	+13.8	-26.7	-23.5
Rhode Island...	313	1,492	878	83,790	267.70	56.16	-13.6	-20.3	-32.4	-24.4
Utah.....	1,066	5,401	3,398	326,397	306.19	60.43	-6.8	-6.8	-34.1	-19.0
Vermont.....	911	4,281	2,481	282,743	310.27	66.05	+5.9	-1.9	+22.2	+23.4
Washington.....	4,646	19,024	10,248	1,236,488	266.14	65.00	-13.1	-19.0	-1.6	+3.0
West Virginia..	566	2,836	1,813	114,016	201.44	40.20	-15.7	-21.4	-57.0	-58.5
Wisconsin.....	1,579	7,805	4,624	557,380	353.00	71.41	-2.9	-10.6	-27.8	-13.5

1/ Data for this segment of the program, shown seperately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Program initiated January 1974.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, June 1974 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		May 1974 in--		June 1973 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	88,263	402,866	241,333	3/$25,311,357	3/ $286.74	3/ $62.83	-6.8	3/ -6.6	-16.5	3/ -10.0
California.....	27,848	122,047	75,532	7,216,962	259.16	59.13	-9.3	-8.2	-21.6	-18.8
Colorado.....	1,123	5,013	2,797	291,127	259.24	58.07	-12.1	-12.1	-11.6	-.6
Delaware.....	47	216	123	7,672	(6/)	35.52	-13.6	-17.2	-40.5	-40.3
Dist. of Col...	2,960	11,228	8,104	596,580	201.55	53.13	+.5	(5/)	+22.7	+35.7
Guam.....	3	15	9	755	(6/)	(6/)	(6/)	(6/)	(6/)	(6/)
Hawaii.....	567	2,552	1,438	201,620	355.59	79.00	-8.4	-9.7	-44.0	-47.8
Illinois.....	11,561	58,167	35,685	3,757,792	325.04	64.60	-2.5	-3.1	-23.6	-16.9
Iowa.....	113	512	286	31,997	283.16	62.49	-1.9	-10.1	(7/)	(7/)
Kansas.....	155	736	429	40,663	262.34	55.25	-20.3	-15.1	-47.0	-47.8
Maryland.....	447	1,984	1,150	96,261	215.35	48.52	-9.1	-11.2	-45.0	-41.1
Massachusetts..	2,111	9,439	5,493	3/ 838,416	3/ 397.17	3/ 88.82	+1.1	3/+26.7	-22.2	3/ -9.8
Michigan.....	11,763	56,937	33,525	4,059,434	345.13	71.30	-3.4	-4.5	+5.2	+12.9
Minnesota.....	968	4,555	2,673	333,839	344.88	73.29	-11.0	-12.0	-36.5	-35.3
Missouri.....	8	30	14	1,204	(6/)	(6/)	(6/)	(6/)	(8/)	(8/)
Nebraska.....	21	123	82	4,589	(6/)	37.31	+15.9	+12.8	-45.1	-42.4
New York.....	4,560	22,161	13,283	3/ 1,745,154	382.71	78.75	-17.4	-22.8	-36.4	-23.8
Ohio.....	10,722	48,958	27,967	2,282,766	212.93	46.63	-.6	-1.0	+1.5	+11.0
Oklahoma.....	70	361	229	17,756	253.66	49.19	-13.6	-13.8	-56.8	-46.1
Oregon.....	2,918	12,076	6,596	774,359	265.37	64.13	-12.0	-11.9	+13.6	+45.2
Pennsylvania...	2,198	9,517	5,126	615,634	280.09	64.69	-3.5	-6.4	-25.3	-24.9
Rhode Island...	237	1,132	672	75,303	317.73	66.52	-24.1	-10.1	-39.7	-20.7
Utah.....	1,019	5,136	3,226	311,042	305.24	60.56	-4.9	-4.7	-37.3	-23.9
Vermont.....	798	3,759	2,177	231,893	290.59	61.69	-12.2	-18.0	+15.1	+9.0
Washington.....	4,138	16,808	9,035	1,182,288	285.71	70.34	-11.6	-4.4	-4.9	+4.1
West Virginia..	424	2,128	1,353	89,846	211.99	42.22	-25.0	-21.2	-61.6	-60.2
Wisconsin.....	1,464	7,278	4,329	506,406	341.24	69.58	-6.8	-9.1	-23.2	-17.5

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $236,000 representing grants for special needs in Massachusetts for the quarter July-September 1974. The average payments and percentage changes are affected accordingly.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Increase of less than 0.05 percent.
6/ No payments made in prior periods.
7/ Program initiated January 1974.
8/ Program reinstated October 1973.
9/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-132

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

JEAN GLODGETT, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

REPLY BRIEF FOR THE APPELLANT

1. Appellees contend (Brief, p. 38) that "[t]he plain meaning of Section 607(b)(2)(C)(ii) is that Congress was concerned that a family could receive concurrent payments of unemployment compensation and AFDC-UF." To the extent this contention suggests that Congress was concerned with double payments, it finds no support in either the legislative history of the statute or in the history of the operation of the AFDC program.

In 1961, when AFDC was first extended to children of unemployed parents, states were given the option to deny in whole or part AFDC benefits to which a child was otherwise entitled if a parent received unemployment compensation. Where a state elected not to deny AFDC if unemployment compensation was received, the result was that unemployment compensation was treated like any other resource, *i.e.*, it was considered in establishing need. See

Department of Health, Education and Welfare, Handbook of Public Assistance Administration, Pt. IV, §3424.26 (1963); S. Rep. No. 165, 87th Cong., 1st Sess., p. 2. Thus, the risk of concurrent or double payments never existed.

To the extent appellees suggest that Congress intended to preclude concurrent (but not double) payments, their contention is correct, but it does not support their claim to relief. In 1968, when Congress replaced the optional provision with the mandatory bar, it sought to reestablish the traditional reliance on unemployment compensation as the primary source of assistance for the unemployed, and to insure that AFDC was available only as a program of last resort.

There is no dispute that at a minimum, in enacting the 1968 amendments, Congress intended that AFDC benefits be terminated if a father received unemployment compensation. Thus, the only question of statutory construction is whether Congress intended to give fathers an option to decline unemployment compensation. As shown in our main brief, the district court's conclusion that such an option exists is contrary to the structure of the Act, its legislative history, and consistent administrative construction.

We add only that the district court decision renders the mandatory bar provision a nullity and, in practical effect, assumes that Congress intended to discourage unemployed fathers from receiving unemployment compensation. That assumption is incorrect. In 1968 Congress was concerned with the escalating costs of the welfare program. It is inconceivable that Congress intended to exacerbate that problem by permitting the shifting of significant costs of assisting the unemployed from unemployment compensation programs to AFDC.

2. Appellees correctly point out that as the prevailing party below they are entitled to rely on any ground supported by the record in seeking affirmance of the district court judgment (Brief, p. 62). Appellees urge that if this Court concludes that the district court's construction of Section 607 is erroneous, it should then consider their constitutional claim. Although we have suggested that the case should be remanded for consideration of the constitutional issue, we are responding to appellees' arguments should this Court reach the question.

Appellees contend that the mandatory bar provision impermissibly discriminates against a class of children solely on the basis of the source of their father's income. Appellees' claim is one of underinclusiveness—that is, they argue that the mandatory bar provision constitutes invidious discrimination because children whose fathers receive unemployment compensation have their AFDC benefits terminated without regard to their "need" status.

Appellees recognize that the mandatory bar provision must be analyzed under the "rational basis" test which this Court has traditionally applied to review of welfare legislation. Under that test a statute must be upheld if the goals are legitimate and the legislative classification is rationally related to the accomplishment of the congressional purpose. See *Jefferson* v. *Hackney*, 406 U.S. 535; *Richardson* v. *Belcher*, 404 U.S. 78, 81; *Dandridge* v. *Williams*, 397 U.S. 471.

Implicit in appellees' constitutional claim are the premises that either it is in fact the goal of the AFDC program to provide benefits to all persons on the basis of need, or, alternatively, that Congress is constitutionally obligated to operate the program in that fashion. Neither premise is correct.